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AUTHOR Orr, Margaret Terry
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ABSTRACT

During a major field study of desegregation in an urban polyethnic high school in New York City, it was observed that the dissemination and implementation of a specific Federal policy had sufficient impact at the local level to attract attention at the school, as well as at various levels between the school and the Federal government. The investigators followed this issue out into the community, interviewing key actors at both the City and the Federal levels who were involved with the issue. The present study examines the process by which the policy, the civil rights enforcement action initiated by the Federal Office for Civil Rights (OCR) against the New York City Board of Education, evolved through the spring of 1978. The New York City Board of Education had received two letters from the OCR that described alleged civil rights violations in employment opportunities and educational services. The Board of Education is in the process of devising a plan to comply with the Department of Health, Education and Welfare guidelines. The interplay of Federal and local agencies as this policy develops is the focus of this study. (Author/PLV)

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A CRITICAL EXAMINATION OF A POLICY PROCESS:
A Case Study of the O.C.R. Review of New York City Schools

Margaret Terry Orr
Horace Mann-Lincoln Institute
Teachers College, Columbia University
New York City, N. Y. 10027

July, 1979

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**A Critical Examination of a Policy Process
OCR Review of New York City Schools**

Margaret Terry Orr

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**The Horace Mann-Lincoln Institute
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New York City, New York 10027
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Chapter 1

INTRODUCTION

One of the major questions in public policy analysis is how a policy is developed and how it is interpreted and modified as it is implemented. This is a relatively new area of study, however. Most of the extant policy literature focuses on only one aspect of the policy process, such as decision-making. There are few studies that examine the entire policy process, regardless of the substantive policy area.

During a major field study of desegregation in an urban polyethnic high school in New York City¹, the researchers observed that the dissemination and implementation of a specific Federal policy had sufficient impact at the local level to attract attention at the school, as well as at various levels between the school and the Federal government. Because that earlier study utilized an ethnographic approach, seeking holistic views of critical events, the investigators followed this issue out into the community, interviewing key actors at both the City and the Federal levels who were involved with the issue. That research was continued in the present study, which examined the process by which the policy -- the civil rights enforcement action initiated by the Federal Office for Civil Rights (D.H.E.W.) against the New York City Board of Education -- evolved through the Spring of 1978.

In November 1976 and January 1977, the New York City Board of Education received two letters from the Director of the Office for Civil Rights (OCR) that described alleged civil rights violations

1. N.I.E. Grant No: 400-76-0006 (1977)

within the New York City school system. These two letters, which were collectively known initially as the Gerry Report and later as the OCR/NYC Review, focused on employment opportunities and educational services, respectively. They were the end products of OCR's three- to four-year investigation of the New York City schools. By the summer of 1977, the Board of Education was in the process of devising a plan to comply with HEW guidelines. This was not taking place in a vacuum, however; the results of that process would have implications for a number of outside interest groups, many of which voiced their opinions about the course of action the Board of Education should take. This particular policy process is still not completed at the time of this writing (Spring 1979). It will likely continue for some time. The enforcement proceedings stemming from the Gerry Report are important because they are intended to result in major changes in the way the New York City schools are managed.

The interplay of Federal and local agencies as this policy developed is the focus of the present study. The natural history of this policy's implementation gives a clear perspective of an actual policy process, illustrating what events occurred and, where possible, why they occurred. From the documentation of the case study and examination of the inter-relationships that emerge, hypotheses have been developed about the policy process. The development of hypotheses in a substantive area begins with the identification of conceptual categories and their properties; hypotheses are then generated from the relationships among

these categories and their properties. Ideally, a substantive theory² serves as a step toward grounded formal theory³ and reformulation of previously established theories. Once the substantive area of research is studied and a core of emerging hypotheses⁴ has been identified, the existing formal models of process, structure, and analysis become useful guides to integrating the categories of formal theory. Glaser and Strauss (1967) caution that this integration cannot be forced, however.

The present study stops short of developing a grounded formal theory of the policy process. Formal theory is not fully developed when it comes from only one substantive area, because "it cannot really be developed sufficiently to take into account all the contingencies and qualifications that will be met in the diverse substantive areas to which it will be applied" (Glaser & Strauss, 1967, pp. 81-82). Although there are no substantive studies of the policy process for a theoretical comparative analysis of this research, the theory developed from this case study has been compared with the theoretical models identified in the next chapter. This comparison proceeded by asking what has been ignored

² Substantive theory: theory developed for a substantive or empirical area of sociological inquiry, such as patient care, race relations, professional education, delinquency, or research organization (Glaser & Strauss, 1967, p.32).

³ Formal theory: theory for a formal or conceptual area of sociological inquiry, such as stigma, deviant behavior, formal organization, socialization, status congruency, authority and power, reward systems, or social mobility (Glaser & Strauss, 1967, p.32).

⁴ Emerging hypotheses: hypotheses that are developed through the comparison of differences and similarities among groups, generating comparisons among relations among categories (Glaser & Strauss, 1967, p. 36-40).

or forgotten because of the initial focus of the present study, by examining those comparisons that were suggested directly by the analysis, and by examining those comparisons that were suggested by reflecting on the theory (Glaser and Strauss, 1967). Although these theoretical models examine only small areas of the entire policy process, they should provide insights for the development of a theory when used with the emerging model. The product of this study thus is a substantive theory in process, through its comparison with other areas of research on policy-related topics, including decision-making and implementation. This theory then can be applied to further substantive formulations on the policy process.

The relevant policy analysis literature is discussed in Chapter 2. The methods of data collection and analysis used in the case study are discussed in Chapter 3.

Although the focus of this study is on a single policy and its evolution, this policy process involves numerous other policies as it unfolds. For instance, the Office for Civil Rights requires compliance with civil rights regulations; the Board of Education, on the other hand, is forced to re-examine and to change many of its policies on school administration and management. The study is further complicated by the very nature of the particular policy under discussion. Social policies derive from values as well as from facts and theory (Reiss, 1970); civil rights policies are one example of this. A policy so value-laden tends to expand in scope, especially as it involves greater numbers of participants. This expansion conflicts with the researcher's need to focus the study as it progresses. Understandably, there has been tension between the needs of an holistic ethnographic approach and the need to be focused.

The case study describes, as clearly as possibly with the available information, the events leading up to and following from OCR's efforts to bring the New York City schools into compliance in various areas of civil rights as identified in the two letters of findings sent to the Board of Education. The case study is documented in Part II (Chapters 4 through 12).

In part III (Chapters 13 through 15) the case study is analyzed. The first chapter examines the various aspects of the case study in light of the structure outlined in Chapter 3. The results of the case study analysis are compared with the summary analyses of the relevant policy analysis literature reviewed in Chapter 2. The final chapter discusses the overall findings and conclusions of this research.

PART ONE
THEORY AND METHODS

Chapter 2

THE LITERATURE

Policy analytic studies can be viewed in terms of forms of logical analysis. Through a study of the literature, three types of theoretical frameworks for analysis emerged. These analytic forms can be separated to clarify the various policy models and theories and to integrate these conceptual frameworks into the case study analysis that follows in later chapters. These analytic models are:

- normative analysis -- statements or analyses that describe how something should be done;
- descriptive analysis -- statements or analyses that identify the essential objective attributes of whatever is being analyzed, such as an organization or an event, to portray what "really" happened; and
- predictive or prescriptive analysis -- statements or analyses that explain what will happen, given a particular event or circumstance.

These three forms serve to explain, to predict, to provide insight, and to establish the existence of relationships among variables.

The primary purpose of this study is to describe the policy process. Normative analysis is not yet useful in explaining what is happening because this type of analysis compares what is expected to happen with what actually occurs. We do not as yet know much about what is expected in the policy process. We are even less able to utilize the third type of framework, to be able to predict direct relationships among elements of the policy process, although this is the direction in which research is headed.

There are many discussions in the literature of phases of the policy process, particularly decision-making and implementation, as well as of variables related to policy, such as organizational and political factors.

The purpose of this literature review is initially to extract important ideas, and to explain why these factors are important and relevant, and later to re-analyze these ideas in light of the case study. This review is not exhaustive, but it should nonetheless be complete enough to illuminate the case study and the subsequent analysis.

Decision-making

One major area dealt with in the policy literature is decision-making. Graham Allison (1971), in his study of the Cuban missile crisis, describes three models of policy decision-making -- the rational actor model, the organizational process model, and the governmental politics model.

Allison's first model (Model I) is the "classical" or rational actor model. This model is "rational" because it stresses goals, objectives, alternatives, and the values implied in the criteria for evaluating a choice. Choice is the focus of this model, and only one choice is to be made. The model always assumes a value-maximizing solution that will be reached through a given payoff function, fixed alternatives, and known consequences.

Systems analysis focuses on these same components. Objectives are made explicit; alternative means of achieving these objectives and the costs of the various alternatives are determined; a criterion is then used to weigh the various alternatives to arrive at the solution for the problem at hand. The goal of systems analysis is to look at an entire problem systematically with attention to explicitness, quantification, and the recognition of uncertainty (Quade, 1966).

Although the rational actor model often serves as an ideal for decision-making, it has proven to be ineffective in its application,

primarily because of the situations to which it has been applied. For instance, Dror (1971) points out the need to remember that policy is made by a system. This policy-making system is

dynamic, open, nonsteady state and includes a large variety of different and changing multi-role components interconnected in different degrees and through a multiplicity of channels. It is closely interwoven with other systems...and it behaves in ways which defy detailed modeling [p. 32].

A model that does not deal with these types of problems therefore breaks down when used; the problems that result are characteristic of the system to which the model is applied.

Many models have been generated as an adaptation of the rational model. The adaptations are attempts not only to fit reality to the model, but also to change concepts as differences between reality and ideal arise. Disjointed incrementalism (Braybrooke & Lindblom, 1963) is an adaptation of both the rational and the systems models. Braybrooke and Lindblom list several shortcomings of the comprehensiveness of the rational model specific to policy analysis: (1) information is costly, (2) there are limits to man's problem-solving capacity, (3) the inadequacy of information must be incorporated, (4) analysis is costly, (5) there is a close observed relationship between facts and values in policy-making, (6) the openness of a system of variables with which the model contends must be considered, and (7) policy problems actually arise in many diverse forms. Quade (1966) adds several further shortcomings to this list: (1) the existence of multiple objectives, which are usually conflicting and obscure; (2) inadequate alternatives for goal attainment; (3) difficulty in measuring effectiveness; (4) uncertainty in prediction; and (5) the inability to select a single criterion.

The focus of disjointed incrementalism becomes more remedial and less comprehensive in its objectives when the social and political contexts are included (Archibald, 1970). These contexts — or values, which are implied — are pivotal in deterring the fulfillment of a rationally ordered decision process. The difficulty centers on values as they relate to the criterion of evaluation: the multiplicity of values in policy analysis, the instability or fluidity of values, conflicts among values, the costs of values, and social disagreement (Braybrooke & Lindblom, 1963). Dror (1971), in his criticisms of the systems approach, suggests the use of a framework that includes penetration into underlying values, assumptions, and strategies; consideration of political variables to include broader and more complex issues; and respect for current social phenomena.

In systems analysis, there is only one problem to be analyzed at a time. This problem is solved by weighing the various alternatives and selecting among them. But, as Dror indicated, this policy is created within a system that is dynamic and is also closely related to other systems that may vary according to the nature of the policy problem.

The shortcomings of the rational model led Braybrooke and Lindblom (1963) to describe a disjointed-incrementalism model. This model reflects what actually occurs in light of the constraints that exist in a policy setting. Some analysts suggest that it better fits the reality of a policy situation than does the rational model (Mann, 1975). It represents a means of adjusting decision processes to a social reality dominated by conflict. This model acknowledges that decision-making deals with only small changes, considering only a limited number of alternatives and consequences. Problems are handled piecemeal, in a fragmentary fashion; there is no attempt to "solve" a problem, only to improve the situation. This model has incorporated into a theoretical framework the faults of the

rational model, however, which are really only the characteristic behavior of a policy system. It does not go much beyond identifying a process for approaching a decision situation.

Allison (1971) found the rational model too limited for his analysis, and developed two other models, the organizational process model and the governmental politics model. He was attempting to compensate in a systematic fashion for the information excluded by the rational actor model.

The premise of Allison's second model (Model II), the organizational process model, is that one can predict the decisions or the output of an organization when one knows something about the behavior of that organization. In this model, policy is viewed as the output of an organization that is functioning according to standard patterns of behavior. This implies that an organization's behaviors must be coordinated. An organization's capabilities and procedures are viewed as tendencies that are predictable because the organization functions with a fixed set of standard operating procedures and programs. These routines form boundaries for an organization's choice for action and decision-making. The organization and the output of the organization are the units of analysis. The organization itself is characterized by a hierarchy of priorities and perceptions and the existence of a reward system. Change in an organization, from the perspective of this model, depends on the organization's ability to assimilate the change into the current organizational processes. Relationships among organizations and within an organization depend on several factors: the nature of the task, the performance measures and information available, the systems of

rewards, the procedures for committing resources, and the leadership's decision-making. Program implementation is also defined in a similar way — standard operating procedures have more effect than does leadership direction. Organizations, because of their systems of routines to handle standard problems, have limited flexibility, and change therefore occurs incrementally.

An organization can be defined as a "set of stable social relations deliberately created, with the explicit intention of continuously accomplishing some specific goals or purposes" (Stinchcombe, 1965, p. 162). Because organizations are not static entities, they must be defined in terms of "organizing," which consists of resolving ambiguity in an artificially structured environment by means of "interlocked behaviors embedded in conditionally related processes" (Weick, 1969, p. 91). The focus for analyzing organizational processes is the organization's specific purpose (output), the systematic procedures for achieving this, its relation to the environment, and the behavior of the people involved.

Organizational processes have been studied from a wide range of perspectives: management theory, economic theories, organizational growth and development, communications, organizational decision-making, interpersonal relations, organizational control structures, and comparative analyses (Allison, 1971). The objective in studying organizations from all these differing perspectives is to accumulate enough information to understand how organizations function, how decisions are made, how organizations are motivated, etc. The assumption is that understanding can then be used to control or to predict future behavior.

Organizations are studied in terms of their components — broken down into subunits, roles, and relationships — as well as in terms of the whole. For instance, an organization is theoretically made up of a formal (bureaucratic) and an informal (organic) system. According to Downs (1967), the formal structure stresses the official role and the rules associated with that role, rather than the individual in the particular role. He views the informal structures as a reactive action that springs up, "placing countervailing emphasis on the persons involved as unique individuals distinct from their official roles" (p. 62). This occurs when people try to establish some personal significance and power of their own.

Several observers have reacted differently to this orientation. For example, Blau (Blau & Meyer, 1971) recommends the study of bureaucratic organization, suggesting that it would help sociologists "in their task of finding an order in the complex interdependencies of social phenomena" (pp. 13-14). Argyris (1972) criticizes this perspective, stating that because Blau focuses on the organization as a whole, he ignores the individual. Argyris notes:

[Herbert Simon] suggests that formal organization structures arise because they represent the very way man thinks and solves problems. Man's thinking mechanisms naturally lead him to specialization and hierarchy [p. 17].

Argyris emphasizes studying the critical parts of an organization -- individual behavior, small group behavior, or intergroup behavior -- which he suggests help to create the whole, the organization. The connection between the formal and informal systems becomes most obvious when attempts are made to create change in the system.

Organizations have also been studied as a form of group behavior (Weick, 1969), as a complex organization (Perrow, 1979) or a type of organization such as the bureaucracy (Downs, 1967; Merton, 1968), or as a social system. Many of the problems identified as characteristics of organizations are similar to those identified by Parsons' social systems theory. Three distinguishing characteristics of social systems are suggested by Parsons: (1) the attribute of differentiation, (2) the tendency toward boundary maintenance (that is, a high degree of integration by the system parts, in spite of environmental pressures), and (3) the tendency toward equilibrium (mechanisms that serve to maintain component functions and interrelationships). Parsons sees four basic problems that must be solved by social systems to continue their existence (thus survival of the system becomes another distinguishing characteristic): adaptation, goal attainment, integration, and pattern maintenance and tension management (Larson, 1973, p. 134). He states that these problems are social facts that coerce and constrain the behavior of actors in a social system.

Because policy occurs within an organization, these characteristics are important variables for understanding what happens to a policy and why. Parson's social systems framework has been criticized, however. Ralf Dahrendorf argues that this model only describes an "ideal type of social system, instead of functioning for the purpose of explaining real problems" (Larson, 1973, p. 152).

As stated, the basic components of Allison's Model II are identified and analyzed in studies of organizations. For instance, Etzioni (1965) states that "all organizations endeavor to enforce standards of

performance and norms of behavior," although they characteristically "differ markedly in the pervasiveness of the standards and norms they attempt to set and enforce" (p. 569, emphasis in original). Merton (1968, p. 252) holds that if "the bureaucracy is to operate successfully it must attain a high degree of reliability of behavior, an unusual degree of conformity with prescribed patterns of action." Herein lies the need for integration and pattern maintenance. Van den Berghe (1969) identified the value system (or ethos) as the most important source of integration for a social system; it is also the stablest. All too often these elements are ignored, however, such as at times of change or reform (Shiman & Lieberman, 1974).

Blau and Scott (1962) identified three major problems in organizations: (1) coordination and communication, (2) discipline and expertness (encompassing the norms and codes of ethics and authority sources), and (3) managerial planning and initiative (roles, status). These problems have been re-identified by a number of other authors, who have used these as focal points in which the relation of one particular variable as it affects or is affected by the other aspects of organization is used to explain organizational processes.

Allison's organizational process model focuses on the existence of organizations in policy-making and on the fact that their characteristics will affect the policy both at the decision-making level and at the implementation level. The assumptions of this model are that organizations are made up of interlocking behaviors, that there are identifiable roles, and that goals, tasks, and outcomes are considered.

All these factors relate to and affect the policy process to some degree because policy is a product of the organization. Certain aspects of the organization and the interface of the organization and the policy can be discovered by focusing on such different organizational features as goal directness and the degree to which the organization can conform to a systems management model; the degree of autonomous control, either as a whole or in terms of the subparts of the bureaucratic process; the needs of individuals for participation and commitment (i.e., the degree of an individual's infusion into the organization and the organization's objectives); and the implementation process as change is affected by the process of conflict and bargaining.

In summary, organizations can be described in terms of their formal and informal systems. The formal aspects reflect officials roles, whereas the informal aspects emphasize the uniqueness of individuals and their behavior within the formal organization. Thus, an organization can be studied from the point of the whole organization or in terms of its parts -- individuals, roles, small groups, etc. In addition, using this framework of formal and informal systems, one can look at problems of coordination and communication, discipline and expertise, and managerial planning and initiative as they are related to the policy process.

Allison's (1971) third model (Model III), the governmental politics model, is also a refinement of the rational model, although its focus is on areas other than the organizational process. The orientation of this model is toward politics, where each leader is in his own right a player in a central competitive game. Behavior is understood according

to various conceptions of national, organizational, and personal goals, usually resulting from political bargaining. Because Allison's study is of governmental action, the characteristics of this third model reflect a governmental/political type of system.

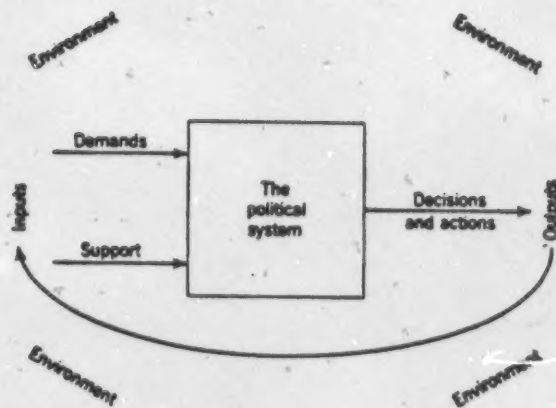
A simplified model of a political system was described by David Easton (1965). The focus is on a system, rather than just on decisions, and it accounts only for inputs and outputs, excluding an identification of what goes on within the system (see Figure 1).

Wirt and Kirst (1972) elaborated upon Easton's model; they looked at the political system as it specifically applies to education. Although they separated the levels of government, and showed that output at one level becomes input at another, theirs is still basically an input-output approach to political systems. They, too, have ignored how inputs become outputs (see Figure 2).

Allison's (1971) political model, although it focuses only on the leaders in a decision-making situation, does attempt to identify the internal processes of the "black box," acknowledging the existence of goals, interests, and stands for each player. These are to be considered features, along with the power, the time constraints, and the action channels, that determine the character of the output. This model is limited, however, because its focus is internal; it ignores the environment's interaction with the system and with the system's output.

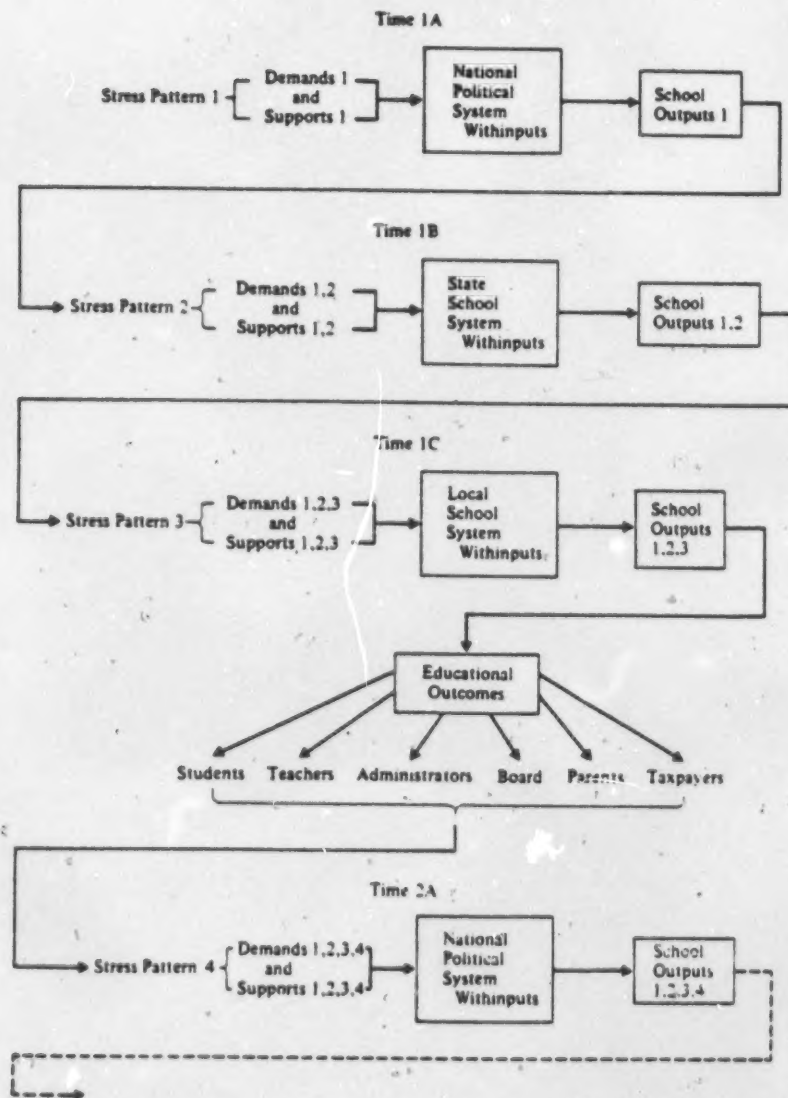
Summerfield (1974) summarizes the policy process in terms of the stages of decision-making. He describes a policy process as "a pattern of events leading to a government decision. A policy process exists wherever a decision is made" (p. 3). He suggests

Figure 1. A Simplified Model of a Political System



Source: Easton, 1965, p. 32.

Figure 2: Intergovernmental Relations in a system Framework



Source: Wirt & Kirst, 1972, p. 149.

that, to examine the policy process, an observer look to "political roles, structures, actions, interactions, myths, precedent, and, ultimately, to the use of power" (p. 4).

Other models that consider the political process as a key element for analysis shift from a focus only on decision-making from the leader's perspective to a focus on the process itself. Wirt's (1968) model attempts to account for all the forces that determine the output, public policy. His model system is the United States government, so again many of the characteristics of such a system are specific to our governmental system. In his model, the law serves as a pivotal element for framing decision-making -- its absence, existence, or objective effects. These factors influence the action of interest groups, which are in turn couched in their own "mixture of needs, preferences, and resources" (p. 326) (see Figure 3).

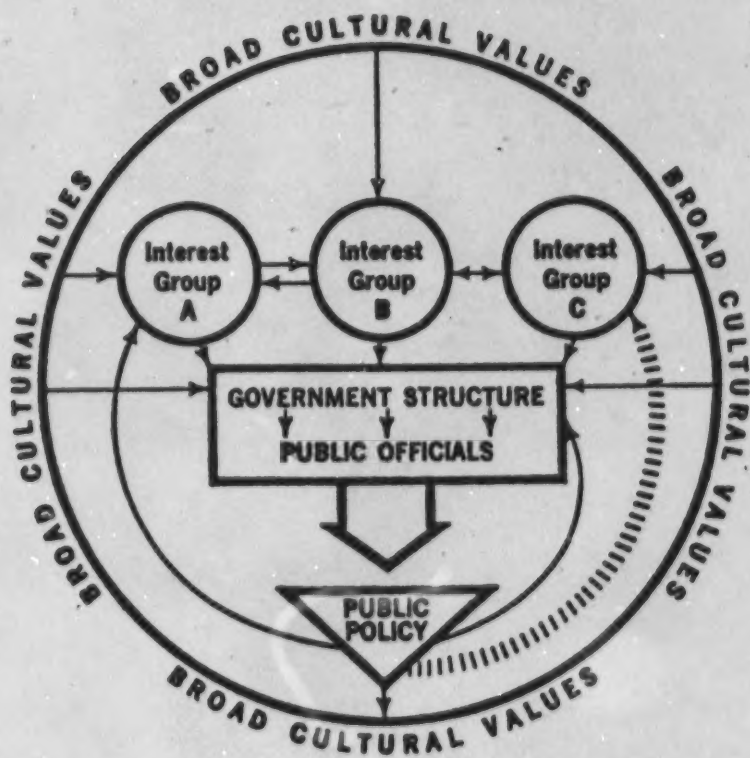
Other observers note that important determiners of output are subordinates who must execute the decisions of their superior authorities:

planners and policy makers cannot determine in advance the applications of a given policy to all possible situations; discretion must be left to those who carry out the policy
[Levine, 1972, p. 162].

The execution of a policy becomes in part a function of the attitude and resources of those who oppose or support the policy, of the energy of those who designed the policy as well as of those who must implement it.

The political model adds to our understanding of the policy process by acknowledging the importance of time, power, and channels of action. It pays attention to the different levels of decision-making and the location of the actors relative to both the process

Figure 3. A Model of the Process of Political Decision-Making



Source: Wirt, 1968, p. 8.

and the decision. This model, however, is more useful for looking within the system; although the various political models consider the relationship of policy across organizations, they nonetheless do not fully explore the interface between policy and the organization. The perspective is basically an input-output one.

All three of Allison's (1971) models focus on the decision-making process. The models, particularly the organization and the political, however, tend to overlap in orientation as they strive to account for all the variations in a system or a process. Although the analysis is on but a part of the policy process -- the level of decision-making -- the conceptual tools (the three models) still view only certain aspects of this "whole." Allison speaks to the advantages of using all three models for analyzing a process, but one is left wondering how to integrate all the information and how to identify the crucial factors that determine the "output."

Because the purpose of each model is to produce different kinds of information, they often reach different kinds of solutions. Each approaches the decision-making problem from a different conceptual level: Model I, choice, and Models II and III, processes, organizational and political, respectively. Allison (1971) explains:

Spectacles magnify one set of factors rather than another and thus not only lead analysis to produce different explanations of problems that appear, in their summary questions, to be the same, but also influence the character of the analyst's puzzle the evidence he assumes to be relevant, the concepts he uses in examining the evidence, and what he takes to be an explanation [p. 251].

Allison (1971) acknowledges that his three models are not the only alternative perspectives for explanation or for viewing decision-making. Other theoretical models have been developed to identify as much of the "process" as possible. Peterson (1976), like Allison, attempted to analyze the policy process from a multi-model paradigm, although he used four, rather than three, models. His approach nonetheless suffers from the same pitfalls identified with Allison's approach.

Peterson's four models of the decision-making process are called a rational decision-making model, an organizational model, an ideological bargaining model, and a pluralistic bargaining model. Peterson organizes his models according to variations in the types of policy formation, based on relationships between objectives and policy choice, and according to the number of components that are "theoretically" relevant to the policy. Thus, the rational decision-making model and the organizational model are single component models. The other models, the ideological model and the pluralistic bargaining model, are multiple component models.

Peterson's rational decision-making model is very similar to Allison's Model I, but Peterson extends his model to apply to subjectively rational behavior. This is based on the assumptions of utility theory, borrowed from economics, in which one opts for a strategy that he/she believes has the greatest probability of maximizing the values he/she believes to be relevant to the situation. Thus one may be acting rationally, although one may not appear to be doing so.

Peterson also describes another form of rationality, "instrumental rationality." This rationality does not assume that actors

have a consistent hierarchy of values. Rather, it assumes that a rational actor selects from the alternatives available the one that is most suited to achieving whatever goals the actor has in mind. There are limitations to this model, however; the decision-maker may not always be able to figure out the best solution, and there is not necessarily a relation of the ends to one another. Peterson limits the use of this model to cases where goals can be reasonably well defined by a single person.

Peterson's organizational model approximates Weber's "ideal-typical" bureaucratic model in part. Peterson also incorporates in his model several other organizational characteristics: (1) organizations can be satisfied with less than full achievement of objectives; (2) overt organizational objectives can be displaced by maintenance needs; and (3) organizations choose among alternatives as much by familiarity as by efficiency. In addition, according to this model, organizational interests, shared values, and operating procedures dovetail to shape the decision-making process. But these organizational interests limit the options of those who are dependent upon the organization for information, policy recommendations, and implementation.

Peterson (1976) states that "ideological bargaining occurs when the dominant policy-makers perceive the issue to raise large questions involving class, race, or regime interests" (pp. 39-40). In this model, participants in the policy-making process include groups committed to broad-gauge objectives involved in a range of policy questions. These groups will find similar allies and similiar enemies across a range of policy questions. Because of this form of commitment, these

groups will form enduring and significant linkages between inclusive social groups, and important political factions will emerge. In this style of bargaining, defeat of the opposition is preferable to a "reasonable" compromise over a policy matter. On the other hand, "pluralistic bargaining occurs when the dominant policy makers combine (1) an interest in maximizing roles with (2) an interest in compromising among group demands" (p.39). In this model, politically active groups will concentrate their energies on those issues having the greatest immediate impact on their interests. They therefore develop new alliances as the issues and tactical situation changes. They will migrate from one policy faction to another as political leaders' position or group concerns change. Thus, they will compromise their differences more readily than groups in the ideological bargaining model will.

Peterson (1976) points out the similarities and differences among these four models based on the dimensions of types of policy formation and number of components. There are, for instance, differences among the models "in terms of directness of the connection they identify between manifest policy objectives and actual policy choice" (p. 135). Both the organizational model and the pluralistic bargaining model acknowledge that policy choice is not "a function of stated organizational or individual policy objectives, but as by-products of unstated desires for political survival" (p. 135). But these two models differ in how they view the formulation of policy:

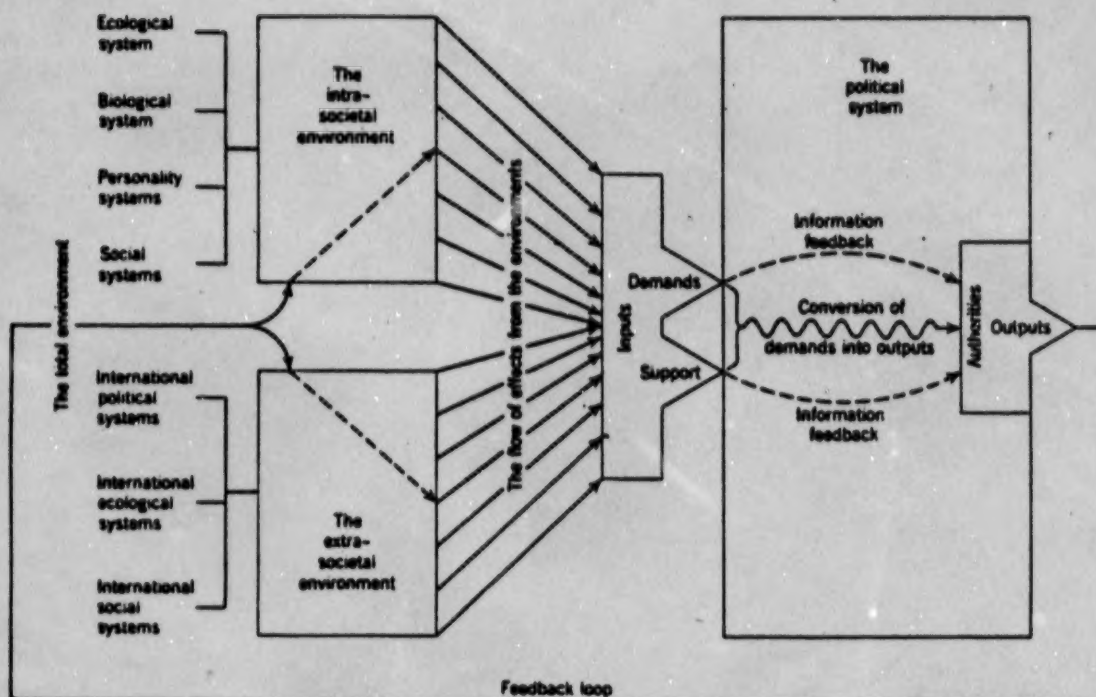
The bargaining model sees policy as formulated through open, adaptive processes with numerous exchanges among systems components. The organizational model treats policy as a function of an organization which is an undifferentiated whole and which therefore has a single set of interests, values, and routines [p. 135].

Peterson points out that, on the other hand, the rational decision-making and the ideological bargaining models are similar in their perspective of policy action. He describes these models as taking the "stated, manifest objectives as decisive determinants of policy action" (p. 136). In addition, it is assumed in these models that their stated goals can be rationally pursued, that "such commitments to social goals can in fact shape individual behavior and policy choice, and that planned social change can in fact be executed in accord with intentions" (p. 136).

Other analysts have attempted to approach the identification and prediction of the policy process from a grand theory perspective. The names of some of these theories are indicative of this attempt: the garbage can model (Cohen, March, & Olsen, 1972) and the cybernetic theory of decision-making (Steinbruner, 1974). The most descriptive model yet to be developed is Easton's (1965a) model that is called a dynamic response model in Wirt and Kirst's (1972) model of a political system. Although this model comes closest of all those discussed to identifying all possible determiners of action and output of a system, it falls short of explaining how this is done (see Figure 4). Easton raised questions about communication flows within such a model, identifying many of the factors that would impact on the dynamic process of a policy process:

we would need to know, for example, what kind of information typically returns to the authorities along the feedback loop and the extent to which it is accurate, false, or distorted. To what degree do time leads and lags, the number of feedback channels, the length of these as transmission belts and their variety, influence the type of information feedback? To what extent is accuracy dependent upon the perceptual apparatus of the authorities and the way in which it may be influenced by ideology, prejudice, indifference, or lack of ability to obtain and interpret information?...we would also need to inquire into the decision rules guiding the retrieval of information from the collective memory banks in which past experience is stored [p. 152].

Figure 4: A Dynamic Response Model of a Political System



Source: Easton, 1965, p. 110.

The cybernetic theory of decision-making (Steinbruner, 1974) attempts to move away from the analytical approach that is characteristic of the rational model. Steinbruner criticizes the central focus of "finding an optimal solution under given constraints by direct calculation" (p. 56). In fact, his paradigm, which is based on cybernetics¹, suggests an opposite focus, which is a process of elimination in reaching a decision. Steinbruner also presents rational approach as a normative model (p. 26), suggesting an ideal model of how decisions ought to be made. This requires trying to fit observed information to the ideal model; interpretations are made to fit the observations to the paradigm and not vice versa.

The cybernetic paradigm is centrally concerned with issues of uncertainty and with the processing of information (Steinbruner, 1974) especially by human beings. The major theme of this paradigm is that the decision process is organized around the problem of controlling inherent uncertainty by means of highly focused attention and highly programmed responses. A critical problem for this model is the question of how organizations and environmental constraints come into existence.

The garbage can model (Cohen, March, & Olsen, 1972) focuses on the same variables, specifically the problem of reducing uncertainty. It attempts to process this information through a computerized program, an

¹Cybernetics -- the theoretical study of control processes in electronic, mechanical, and biological systems, especially the mathematical analysis of the flow of information in such systems. The American Heritage Dictionary of the English Language (Boston: Houghton Mifflin, 1976).

elaborate system to specify the basic variables: the choices, the problems, the solutions, and the energy of participants. All of these are a function of time, organizational structure, and available resources:

By making explicit certain behavioral assumptions...concerning energy additivity, energy allocation and problem allocation... the purpose of this simulation is to demonstrate how certain factors or organizational structures affect important characteristics of decision [p. 47].

These models try to break away from refinements of the rational model, while simultaneously trying to account for more information to predict behavior or outcomes. Yet they are confronted with a second problem of having more information than can be handled without some means of simplification. Steinbruner (1974) confesses that organizational decision behavior is usually too complex for the application of the cybernetic paradigm, thus restricting its use to simple situations.

Implementation

The policy process is not restricted to decision-making, although the various models of decision-making presented above do inform to some degree how one might view the rest of the policy process. Case studies of program change and implementation have shown that a policy can change at any stage of the policy process -- decision-making, adoption, implementation, or incorporation. The ultimate success of any social program is thus questionable (Berman & McLaughlin, 1974).

A review of the literature on "change" in organizations has helped to clarify the restrictions of a rational model for discovering the issues involved in implementation or institutional adoption of an innovative strategy. Research and development models were the basis of many early studies of change. These studies, according to Berman (1978), consisted of a sequence of stages from design to adoption. They did not consider the consequences of implementation and were therefore "inaccurate" and "inappropriate" for studying change. Later research on change settings and programs has shown that implementation, rather than the type of innovation, has a strong effect on outcomes. As Berman and McLaughlin (1974) stated:

The highly variable and unstable nature of educational innovations implies that it is misleading as well as unfruitful to evaluate the effectiveness of an innovative strategy apart from its institutional setting; and also that both the nature of the outcome of an innovative plan are determined by the complex and little understood process of implementation [p. 117]. (Berman & McLaughlin, 1974)

Until recently, recently on the policy process has been focused primarily on decision-making. As more and more major social programs have "failed" to achieve their goals, however, attention has been drawn to the study of implementation and to the policy process in general.

Because this area of research is so new, it is characterized simultaneously by a lack of theory and by a need for a framework for research. Berman (1978) notes that current implementation "theory" consists primarily of atheoretical case studies that vary in quality and of studies that focus on one or two levels of implementation but ignore the whole chain from policy inputs to outcomes. Finally, there is a lack of cross comparisons of different stages within the implementation process.

Although there is as yet no framework for "conducting generalizable research on what goes wrong with social policy and... how to improve policy performance" (Berman, 1978, p. 157), there has been enough preliminary theorizing to permit a discussion of the implementation process and how it can be understood in relation to the whole policy process. Often, the study of implementation has been structured "to examine those factors that contribute to the realization or non-realization of policy objectives" (Van Meter & Van Horn, 1975, p. 448). Frameworks are beginning to be developed. In addition, just as research from related areas has helped to inform studies of the decision-making process, so too can related research inform the study of the implementation process.

Discussions of implementation converge on elements that are similar to those of decision-making theory. Although the behavior of the actors involved may be different and the purpose of their actions are different in implementation and decision-making, similar variables are involved in the two processes, regardless of the "lenses" used to view the process. The following discussion of implementation theory is based on a framework outlined by Elmore (1978). This framework is similar to Allison's (1971) three models of decision-making--the rational actor model, the organizational processes model, and the governmental politics model. Elmore adds a fourth model to

describe implementation processes. Throughout the following discussion of implementation theory and research, the similarities between the two approaches will be noted.

In implementation theory (as in decision-making theory), there is an underlying rational assumption of how policy should be implemented. Berman (1978) describes this in an equation, which states that, once a policy choice is made, outcomes will occur. Like the rational model of decision-making, the rational model of implementation views organizations as value maximizers with goal-directed behaviors that are effective to the degree to which the goals are achieved. Implementation is structured according to hierarchical control, assuming that the organizational operations are also structured. Implementation within this model is defined as a detailed set of objectives that reflect the policy, assign responsibilities, monitor system performance, and make internal adjustments. The dynamics of the process are recognized as the demands of the environment.

This rational model is a normative model of implementation. Problems can result when the participants at the various levels of implementation do not share the norms of the model. Radin (1977), in her study of civil rights policies, elaborated on this assumption about what happens in policy implementation. She describes implementation first as a complex process involving multiple steps. The results of these activities can be seen as the output of the implementation cycle. Second, each step of the process is characterized by a distinct set of problems, opportunities, and constraints that should be anticipated. Third, each step in the process is dependent on a distinct set of actors. Fourth, significant policy alternatives are frequently cast in the language of technical administrative determinations. A specific decision to choose one or another policy alternative in any of

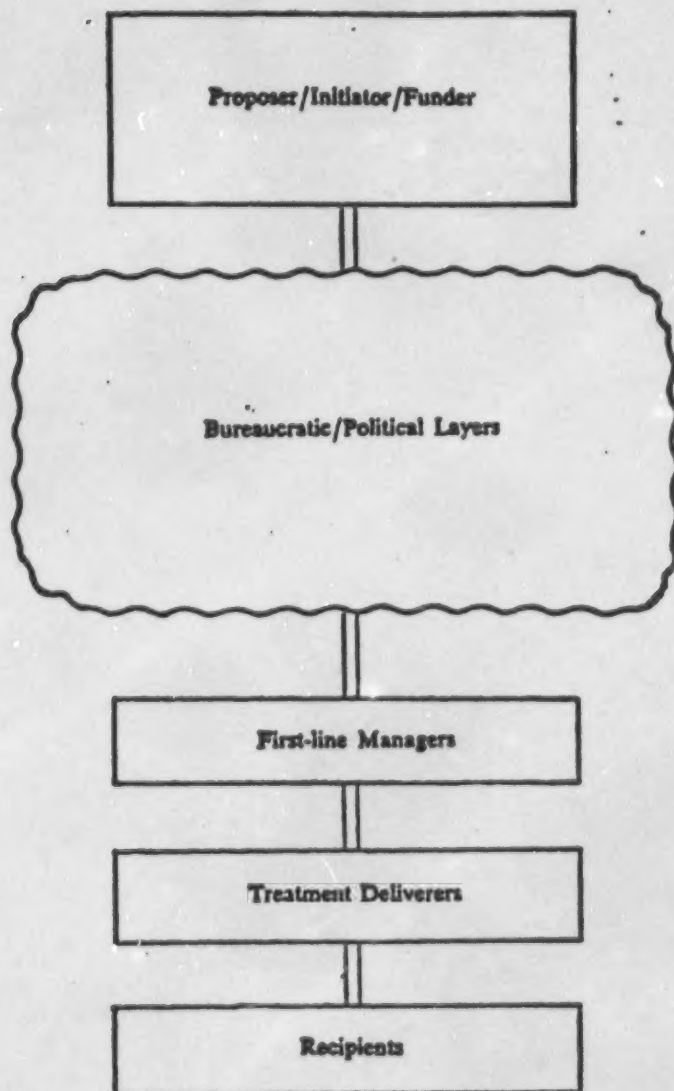
these areas is not per se a constraint on the implementation of a policy. This involves day-to-day administrative decisions on such topics as the allocation of resources, determination of budget needs, organizational structure, monitoring, and so forth.

Most of the early discussions of the implementation process have been in terms of steps in implementation relative to the design intended. These steps include the processing of policy through the successive levels of organizational layers, to the point of change or delivery. Williams' diagram illustrates this simple organizational model of implementation (see Figure 5).

The success of implementation, as explained by the rational model, is based on the assumption that everyone will cooperate within its scope. As Elmore (1978) points out, however, participants in the implementation process do not always share the norms of the model; this model is therefore not sufficient for explaining the success or failure of policy implementation. Elmore suggests the use of another model -- Model II, implementation as bureaucratic process -- to examine more closely the organizational relationships of individuals and policy implementation. This model identifies two attributes of organizations as central to affecting implementation: discretion and routine. In addition, Elmore views organizations as simplifiers; they break down processes into discrete tasks that are handled by specialized units assigned the responsibility for these tasks.

In this model, the final goal of implementation is the organizational output. The success of implementation can be assessed by determining "the extent to which the actual outputs of an organization have changed in the expected direction after the introduction of an innovation" (Williams, 1975, p. 560). Unlike the rational model, which assumes that subunits of an organization will implement a policy or program according to design,

Figure 5. An Implementation Paradigm



Source: Williams, 1975, p. 546.

the bureaucratic process model assumes that subunits of an organization "will continue to do what they have been doing until some way is found to make them do otherwise" (Elmore, 1978, p. 202). One therefore should not expect a policy to be implemented according to design.

Levine (1972) discusses this relationship between the use of bureaucratic rules and structure and the degree of implementation. According to him, the setting forth of plans and rules for implementation does not ordinarily lead to their objectives as written. In fact, he notes that the higher the degree of administration required for implementation, the greater the tendency for failure. All too often, this is compounded by an attempt to solve the problem by adding more rules, which only aggravates the problem. He places the burden of this phenomenon on the policy planners, suggesting that policies or programs fail to produce expected results because planners cannot determine in advance the application of a given policy in all possible situations. He suggests that more discretion be left to those who carry out the policy.

In seeking to determine the causes of poor or good policy implementation, some theorists have examined both the policy to be implemented and the setting within which implementation takes place. Berman (1978), for instance, assumes that implementation stems from interaction of a policy with its institutional setting.

Researchers, rejecting the simpler formulations of many policy analysts, operations researchers, and planners, seem to agree that a policy's implementation problem derives not only from its design; it derives also from the policy's relationship to its institutional setting. With this sharpened focus on the institutional setting has come an awareness that the enduring characteristics of the setting--the setting's structure--shape implementation in similar ways across diverse policy sectors
[p. 159].

Berman describes program implementation as the complex interplay between the policy choice and the policy's institutional setting.

Van Meter and Van Horn (1975) elaborate on this interplay of organizational and implementation processes, by pointing out two distinguishing characteristics "the amount of change involved, and the extent to which there is goal consensus among the participants in the implementation process" (P. 458). The elements of change depend on the extent to which the policy deviates from previous organizational policies, the amount of change that is required, and the degree of conflict or consensus over its goals and objectives that occurs within the organization.

Berman (1978) describes differences in setting in terms of how various organizations submit to or individuals interact with the implementation process. His focus was on national policy, for which there are two levels of implementation. The first is macro-implementation, the problem of the Federal government's executing its policy to influence local delivery organizations to behave in the desired ways, as outlined in the policy. The second is micro-implementation, the problems of local organizations as they respond to Federal actions and as they devise and carry out their own internal policies. The dichotomous perspective of implementation (macro-/micro-implementation) can be conceived of more broadly. Macro-implementation in fact reflects the types of interorganizational relationships that occur within stages of implementation, including the federal-local relationship. Micro-implementation is applicable to the study of intro-organizational dynamics that exist as an agency adjusts (or does not adjust) to the designs of policies or programs being implemented. This need not be limited to federal program implementation, but can also apply to state programs or to district and building level relations with program implementation.

Berman (1978) notes several concepts that are useful for understanding the dynamics of interorganizational relationships within the levels of macro-implementation. It is often useful to perceive the interorganizational relationships as a "loosely-coupled" system (Weick, 1976). According to Weick, "loose coupling" connotes things, "'anythings' that may be tied together either weakly or infrequently or slowly or with minimal interdependence" (p. 5).

Weick intended to describe the characteristics of interagency responsiveness as well as the existence of physical or logical separateness of agencies. Several variables might serve as independent indicators of the existence of a loosely-coupled system. Organizations might share resources or tasks or be involved in conflict. An analyst would thus look for evidence of types of activities, context, or environment patterns in light of loose coupling among groups or organizations. It is important to realize that, for individuals or organizations to create such a relationship, they must also negotiate some type of "social reality" around them, which can be indicated by any of the above-mentioned elements.

Coupling is conceptually useful in describing the relationship of one agency to another as implementation proceeds. Policy implementation is only one reason organizations are brought together in such a relationship. Loose coupling for implementation is temporary. Although this aspect of flexibility is one of its advantages, it also adds to the weakness of the relationship of organizations and the power each agency has to ensure that implementation is proceeding according to design. Other characteristics of implementation add to the weakness of this relationship. As Berman (1978) points out, within a loosely-coupled structure, each passage from an implementation stage creates difficulties and uncertainty, which increases with the number of passages. Uncertainty at a macro-organizational level can be further complicated by goal discrepancies,

influence and authority differentials, resource deficiencies, and communication difficulties among organizations (p. 166). All these problems can have an impact on the implementation process. Authority, within this loosely-coupled structure, cannot be used as it would be within a single organization.

"Loose coupling" connotes the existence of structure in relationships among organizations in the implementation process and also connotes the weaknesses inherent in these relationships. It is not, however, sufficient to explain the dynamics of the interorganizational relationships that exist as policy is transmuted through successive levels of implementation. As Williams (1975) observes, implementation necessarily takes into consideration interorganizational relationships as a policy passes from level to level. These organizational relationships are critically affected by communication and leadership at each level of implementation as well as between levels.

Litwak (1970) outlines the types of organizational relationships that can result from the coordination of formal organizations based on the characteristics of these organizations and the circumstances under which they establish linkages. Implementation is only one type of circumstance in which interorganizational relationships are possible. He analyzes these relationships according to the type of organizational structure, the degree of formality of the linkages, and the types of interdependence that can be created in this process (e.g., facilitative or competitive). Litwak examines the way information is interpreted. He also looks at the reciprocity of interorganizational relationships, the degree of autonomy and dependency in interaction, the relationship of characteristics of organizational awareness and centrality of control, and standardization.

According to Aiken and Hage (1971), interorganizational communication seems to be affected most by the structural characteristics of interorganizational relationships. This structure also influences how individuals will behave when implementing a program or a policy. An example is pointed out by Louis (1976). When the linkage is outside the organization, the pressure toward cooperation and subsequent goal displacement would appear to be stronger than when clients are dealt with inside the organization. In other words, the type of relationship varies with the location of the relationship.

Intra-organizational factors also affect what happens to a policy or program. Berman (1978) refers to this as the micro-implementation level. Often, this is the local or delivery level for policy or program implementation, the point at which program adoption is intended. This is the level at which a change is required.

A great deal of research has been conducted on how an organization reacts to imposed change and on what happens to the policy or program that is being implemented. This research, such as studies of Follow-Through (Rivlin, 1975), of federal programs supporting educational change (McLaughlin, 1976) and of an employment project supported by the Economic Development Administration (Pressman and Wildavsky) have identified many of the problems of change. Policy implementation according to design can only be a hoped for, rather than an expected, outcome. Van Meter and Van Horn (1975) outlined several elements that may affect the implementation of a policy or program. The major elements include the formal structure of the organization and the formal attributes of the personnel. The other elements are the competence and size of an agency's staff; the degree of hierarchical control of subunit decisions and processes within the implementing agencies; and agency's political resources (e.g., support among legislators and executives); the vitality of an organization; the degree of "open" communication (i.e., networks of communication and a relatively high degree of freedom in communication with persons outside the

organization within an organization and the agency's formal and informal linkages with the "policy-making" or "policy-enforcing" body (p. 471).

The closer program implementation is to a program's goal, the more the policy or program will impact on an organization's routines and standard operating procedures. A study of "street-level bureaucrats" and their clients notes that organizations as well as individuals are characterized by routine in their work. The importance of understanding the perspective from the level of impact is that those at this level must contend with incorporating the change without being the ones to decide upon the type to be required. "Street-level bureaucrats" are "those men and women who, in their face to face encounters with citizens, 'represent' government to the people" (Lipsky, 1976, p. 196). This concept includes police officers and teachers, who have independence on the job through discretion in making decisions. This discretion is fairly extensive and the potential impact on citizens is also fairly extensive. Their job performance is difficult to measure because street-level bureaucrats work in a climate of uncertainty, limited time, and limited information. Jobs are performed in response to often ambiguous and contradictory expectations. The street-level bureaucrat thus develops mechanisms to cope, often by simplification or the development of routines. This is the climate in which implementation often occurs, especially in the case of education programs or policy.

Elmore (1978) describes this bureaucratic habit when faced with expectations for implementation of a policy or program:

Coping routines derive their appeal and resilience from the fact that they are rooted in the immediate demands of work; they are, then, almost generically immune to hierarchical control. It's difficult, within the context of the bureaucratic process model, to think of ways to change street-level behavior in a predictable fashion [p. 208].

Several patterns of implementation have been observed, including: mutual adaptation, in which both the project design and changes in the institutional

setting and individual participants occur during the course of implementation; cooperation, which signifies adaptation of the project design, but no change on the part of participants or the institutional setting; and nonimplementation, in which the project breaks down or is ignored by project participants (McLaughlin, 1976). The Rand change agent study concluded that implementation is a "dynamic organizational process that is shaped over time by interaction between project goals and methods, and the institutional setting (p. 340). Mann (1976) notes that: "Implementation begins when the project settles down to do the hard work of trying to influence teacher behavior" (p. 325). Again, as with the macro-level of implementation, the degree of change that can be accomplished at the micro-level varies according to divergence from the system's goals, the amount of change necessary, and the extent of change within the system required by the purpose of the project.

Berman (1978) noted that, after considering all these complications within a single organization, one cannot assume uniform implementation across sites. Moreover, the variation in the internal dynamics of an organization and how this affects implementation is further complicated by the "openness" of an organization to its environment. The more "open" an organization is, the less it will be able to resist the demands and influence of the environment.

Elmore's (1978) first two models of implementation -- management systems and bureaucratic processes -- assumed that policy is made at the top and implemented at the bottom. Elmore's third model, organizational development, assumes that the major responsibility for implementation is at the lower levels of organization, where the capacity to implement exists. Although Allison excluded the social-psychological dimension from his three models, he did note that this paradigm of the individual cognitive processes of central persons in a policy process still needed to be considered. The "process of initiating and implementing new policy actually begins at the bottom and ends at the top" (p. 215).

Thus, organizations should function to satisfy the basic psychological and social needs of individuals, including autonomy and control over one's own work, participation in decisions affecting participants, and the need for commitment before change is made. Decision-making depends on the creation of effective work groups wherein the quality of interpersonal relationships determines the quality of decisions. Effective work depends on mutual agreement on goals, open communications, mutual trust and support, full utilization of skills, and effective management of conflict. Those at the top, the policy-makers, are resources to those in the organization who are doing the implementing. Top administration cannot exert direct control over the factors that determine success or failure.

Elmore (1978) lists several determiners of successful implementation from an organizational development perspective; that materials be developed by implementors, that there be strong interpersonal and professional ties among implementors, that there be non-manipulative support from high-level administrators, and that there be explicit reliance on incentives that promote individual commitment rather than conformity. The "result is a consensus reflecting the initial intent of policy-makers and the independent judgment of implementors" (p. 216). This approach views more intensively the micro-implementation level and examines very closely each individual involved with the actual change or program that is implemented.

Many studies of change and implementation have acknowledged the importance of the individual in operating to allow change to occur. For instance, as Mann (1976) points out, one reason for the difficulty encountered in implementing education programs is that teachers may believe in what they are already doing. If this is not dealt with, it can inhibit the degree to which

changes can be brought about. This also holds true for the role of the principal in educational change. Mann concludes that the "projects which achieved the least of their own change-oriented agendas did so in large part because building principals redirected or subverted project efforts at the school building level" (p. 328).

The perceptions of individuals at this level, what they can do to subvert or redirect policy, can be observed in several regular organization patterns (or "games") as Bardach (1977) illustrates. These games are the observable behaviors that emerge from the execution of discretion and autonomy within positions or organizations. They highlight the variations that can occur within the boundaries of individual control, participation, and commitment for policy implementation. Bardach describes the extreme configurations and the predictable deviations that occur relative to program or policy implementation. These behaviors are based on organizational structure, the motivations and sanctions for individuals, the way an individual might respond within an organization, and the particular policy or program. For instance, Bardach analyzed the kinds of delays that occur within an organization as a policy is implemented, including unplanned for, accidental occurrences; delays that are caused intentionally by those who want to stop an undesired action or to reassess the development of a program; delay resulting from alternative time priorities; or delay that results from delay (p. 54).

Bardach (1977) notes that implementation of a "single governmental strategy may involve the complex and interrelated activities of several levels of governmental bureaus and agencies, private organizations, professional associations, interest groups, and clientele populations" (p. 5). He summarizes the "implementation process" as "(1) a process of assembling

the elements required to produce a particular programmatic outcome, and (2) the playing out of a number of loosely inter-related games whereby these elements are withheld from or delivered to the program assembly process on particular terms" [pp. 57-58].

Some of Bardach's (1977) descriptions are characterized as games in which the individual takes advantage of the system or the situation. Many of his descriptions provide insight into the ways in which personal priorities or characteristics within an organization can impede the policy implementation process. For example, one game is called "not our problem." In this game,

Bureaus typically desire augmented budgets and expanded territories, but this desire normally evaporates as soon as the bureau recognizes that the program will impose a heavy work load or that it will take the bureau into realms of controversy or that the required tasks are so difficult that it lacks the capacity to do the job. If the program is that unattractive, a bureau may try to shift certain of the operating responsibilities to a different bureau. If nobody wants the responsibilities, the services or regulatory activities that would flow from them are not performed [p. 159]

Another game, played more by individuals than by organizations, is "easy life."

Most civil servants do not earn particularly handsome salaries and wages, and many feel entitled to take additional compensation by tailoring their work environment to suit themselves as much as possible. They can ordinarily get away with more than workers in private industry, who play the same game, of course, because they are protected by civil service rules and also because the ultimate impact of their Easy Life game is diffused among the public who must deal with the bureau as customers or clients or object of regulation [p. 76].

Bardach describes these various games as an attempt to be able to predict the route of a policy implementation process, in order to be more certain a policy will be implemented. Although he is able to identify many games that individuals play, other characteristics of the situation -- how

skillfully the game is played, who will be involved, what the boundaries are for participation, and how large will the magnitude of the game be — inhibit the predictability of policy implementation.

Bardach (1977) summarizes the implementation process as

characterized by the maneuvering of a large number of semi-autonomous actors, each of which tries to gain access to program elements not under its own control while at the same time trying to extract better terms from other actors seeking access to elements that it does control [p. 51].

Bardach (1977) does not limit his analysis of organizations to the behavior of individuals involved with implementation processes. Rather, he describes policy implementation as a political process as well. He illustrates the politics that results when a program is implemented:

It is a form of politics in which the very existence of an already defined policy mandate, legally and legitimately authorized in some prior political process, affects the strategy and tactics of the struggle. The dominant effect is to make the politics of the implementation process highly defensive [p. 37].

He elaborates on the reasons for this form of defensive politics:

The primary reason is that all, or at least many, of the important participants act within a context of expectations that something will happen that bears at least a passing resemblance to whatever was mandated by the initial policy decision. A second, if related, reason is that participants who favor the policy goals of the mandate use the existence of the mandate as a moral and sometimes legal weapon in the emerging struggle over the terms on which policy is effected [p. 43].

Bardach's view of the politicalness of the implementation process is consistent with Elmore's (1978) final model of implementation: implementation as conflict and bargaining. Allison's (1971) Model III views decision-making within a political arena that includes national, organizational,

and personal goals; decisions are made through political bargaining. Elmore similarly focuses on the arena of conflict and the necessity for bargaining to establish implementation within an organizational setting.

In this model, organizations are arenas of conflict where specific interests compete in light of relative power and scarce resources. Power is viewed as temporary, depending on the capability of some to mobilize sufficient resources to manipulate the behavior of others. Decision-making, then, consists of bargaining among units; decisions are a result of convergence among actors of different preferences and resources. Thus, bargaining "only requires that [all parties] agree to adjust their behavior mutually in the interest of preserving the bargaining relationship as a means of allocating resources" (Elmore, 1978, p.218). Implementation comes as a result of "a complex series of bargained decisions reflecting the preferences and resources of participants" (p.218).

According to Wirt and Kirst (1972), policies and programs being implemented are often viewed as outputs of a decision-making system (see Figure 2). Yet, because of the nature of the implementation process within a conflict or bargaining arena, this output is rarely a permanent situation. Nor is this output self-executing; rather, its execution is a function of numerous intervening variables, such as the attitudes and resources of its opponents and supporters, or the energy with which political authorities seek compliance. These outcomes may reflect either greatly or not at all the stress that originally precipitated the policy-making process. Moreover, these outcomes may in turn generate yet another set of stresses.

Williams (1975) notes that "implementation is first and foremost a bureaucratic and political problem. Bureaucratic and political factors -- not conventional technical or methodological problems per se -- represent

the main near-term deterrents to more effective implementation" (p. 455).

In Elmore's (1978) model, these political factors are understood by "focusing on conflicts among actors, the resources they bring to the bargaining process, and the mechanisms by which they adjust to each other's mores" (p. 222). But the outcomes of implementation are "temporary bargaining solutions," and therefore do not require overall agreement or commonality of purpose.

Bargaining decisions proceed by convergence, adjustment, and closure among individuals who may be pursuing essentially independent ends. The individual's ability to influence change depends upon flexibility and "maintaining a reservoir of good will. The person who fights every issue as though it were vital, exhausts his resources" (Bauer, 1968, p.17).

The political process of implementation can be viewed from the perspective of the individual in much the same way as Allison (1971), in his governmental politics model, views the decision-making actor as a number of individual players. As Allison notes, "(g)roups of these players constitute the agent for particular government decisions and actions" (p. 164). The process of moving policy across levels of government for implementation can also be understood as bargaining among separate organizations, and can be understood conceptually in a framework similar to that of loose coupling.

In addition, there is more than one form of power used in bargaining. Van Meter and Van Horn (1975) extend these concepts of power and consensus in implementation to two kinds of power. One kind of power is normative power, "the allocation and manipulation of symbolic rewards and deprivations" (p. 455). The second is remunerative power, "the allocation of material resources, such as salaries, commissions, fringe benefits, and services" (p. 545). Thus, as Elmore pointed out, the formal hierarchical structure is not necessarily an indication of the distribution of power.

Power exists in many forms and locations. Its identification helps to uncover influences on the implementation process.

Van Meter and Van Horn (1975) broaden the concept of a political arena to acknowledge the potential impact of economic, social, and political conditions on the implementation of policy.

- (a) Are the economic resources available within the implementing jurisdiction (or organization) sufficient to support successful implementation?
- (b) To what extent (and how) will prevailing economic and social conditions be affected by the implementation of the policy in question?
- (c) What is the nature of public opinion; how salient is the related policy issue?
- (d) Do elites favor or oppose implementation of the policy?
- (e) What is the partisan character of the implementing jurisdiction (or organization); is there partisan opposition to or support for the policy?
- (f) To what extent are private interest groups mobilized in support of or opposition to the policy? [p. 472].

Bardach (1977) agrees on the importance of the affect of these other conditions on implementation. According to him, although it is essential to invest a good deal of energy in designing implementation policies and programs, for problems of political, economic, and social theory have the greater effect on policy implementation.

Four models, representing four perspectives, of the implementation process have been described. The next analytic step is to pull together these various factors in studying implementation. One suggestion for doing this comes from Williams (1975), who proposes that analysis should begin with a consideration of the clarity, precision, comprehensiveness, and reasonableness of the preliminary policy specifications. The next step is to investigate the technical capability to implement the political feasibility, and the

technical and political strategies for implementation, In addition, one should examine the implementing organizations and the individuals within those organizations. This approach is still fairly general, but the study of implementation is fairly new.

A Synthesis

The purpose of the study of the policy process has been to develop a perspective or framework for describing and explaining the policy process. As Lasswell summarizes, in describing the usefulness of a comprehensive model of the policy process.

Systematic models provide a means of exploring interdependence among the functional components of a policy process. They are also servicable in studying the interplay among structures specialized to each function, such as rival or associated planning agencies, parties, legislative chambers, police and civil claims agencies, administrative departments (commissions, authorities), legislative revision and compensation agencies, or control commissions. Subsystem models can be used to investigate the policy interplay among the levels of hierachical structure, or within one entity. A comprehensive policy model can be employed to describe the degree to which any person, group, or structure is involved in each of the policy processes of each arena where it is situated (national, transnational, subnational) [Lasswell, 1970, p. 9].

Finally, "(w)hatever the set of problems with which he operates comfortably, a policy scientist achieves a conception of policy process and also of social process that is at least latently equivalent to any other comprehensive system of policy analysis" (p. 11). Thus, a comprehensive and complete model is achievable and can be generalizable.

Several theoretical models have been developed to explain elements of the policy process — the decision-making process and the implementation process. These models have employed different perspectives to illuminate different components of the process. The reader is left with the task of fitting the information together or of choosing among the models in conducting policy analysis. The authors reviewed above speak to the problem of using models together.

Allison (1971) acknowledges that his three models are not mutually exclusive alternatives for explaining the decision-making process, that each emphasizes some aspects of that process and ignores others. According to Allison, "(t)he models can therefore be understood as building blocks in a larger model of the determinants of outcomes" (p. 275). Allison does caution, however, that these models are not equally applicable in examining a decision-making process or outcome. This would require a typology of actions and outcomes related to these frameworks. He suggests nonetheless that the characteristics of these models can be mixed whereby new explanatory models can be created. Model I can fix the broader context of the decision-making process, identifying the larger national patterns and the shared images. Model II will illuminate the organizational routines that produce the information, the alternatives, and the actions. Within this context, further detail of the decision-making process can be identified with Model III, which focuses on the individual leaders of an organization and on the politics among them that determine the major choices that are made.

Peterson (1976) also acknowledges that no model can be used to examine more than one facet of the decision-making process. "Each is only a snapshot of a multi-dimensional event" (p. 137). He recommends interrelating his four models to achieve "a more exact interpretation" of events." He points out, however, that there is a certain "tension" among the models. Each pair of models provides competing explanations, although both pluralistic and ideological elements could be found in any single policy process. Peterson notes, however, that "in most cases one or the other model will best organize and give coherence to events

under investigation" (p. 138). In addition, the issues and context of the policy will determine the utility of each model. The concerns or questions of the policy analyst also will influence the model or models used. For instance, "the choice between the rational and organizational models ... depends in part on whether the analyst regards the deviation in actual outcomes from apparent policy objectives as significant or not" (p. 138). The prediction of the analyst and the precision of prediction of analysis that is wanted will determine which model will be used and the degree to which various models are combined.

Elmore (1978) states that his four models are necessarily constructs of ideal types that are useful because they draw from organizational theory and can help to explain why implementation fails; these models highlight certain features of the implementation process. Elmore does not suggest that these models are rival hypotheses, that one model might be superior to the others. He cautions against this because the models contain both descriptive and normative information, which will not always be followed in all situations. Rather, he suggests using the different models to examine the same set of events in order to determine how different factors affect the implementation process. Elmore also suggests that some problems are more amenable to solution when one perspective rather than another is used. The various models can thus be used to distinguish among different kinds of problems. In summary, Elmore suggests treating "certain parts of a complex process as analytically separable" (p. 228) rather than combining the models to form a conceptual whole of the implementation process.

As noted above, a few comprehensive policy models have been attempted.

Those that exist are primarily based on a focusing on fewer variables such as how to handle information by controlling uncertainty, thereby being better able to explain what is happening or are case studies as noted above. Even these models are limited, such as to decision-making. These models although informative in their areas are not expected to model a policy process for explanatory purposes.

In summary, there is a trend in policy analysis away from focusing on one actor or one organization as a means of examining the process toward a vantage point Bauer calls the "policy system." According to Bauer (1968),

for approximately 40 years, American political scientists have increasingly insisted on a more naturalistic reporting of what has actually happened as policies have been formed or as people have tried to implement existing policies. [pp. 6-7].

At the same time, actions within a policy process that may diverge from a rational model are decreasingly viewed as irrational; there is "an increased sense of responsibility for discovering the rationale that lies behind seemingly inexplicable behavior." [Bauer, 1968, p. 7]

Within this trend of developing a naturalistic perspective there are more studies of policy from the perspective of the whole scope of the policy process as well as from a focus on the decision-making or the implementation processes. For example theorists are beginning to make connections between what happens in the decision-making process and what happens in the implementation process: the former may have a foreshadowing effect on the latter (Berman, 1978). Various stages of the policy process have been identified as in Williams' illustration^{*} of analytic and assessment activities, and in the identification of Bauer's (1968) three areas that he describes the strategic moves in policy formation:

- "(1) intellectual activities of perception, analysis, and choice, which often are subsumed under the rubric of "decision-making";
- (2) social processes of implementation policies formulated by means of organizational structure, systems of measurement and

^{*} Figure 6.

Figure 6: Stages and Analytic/Assessment Activities in the Policy and Experimentation Processes

DECISION-MAKING			IMPLEMENTATION		OPERATIONS
Search for information and theory; formulation of policy idea	Development of policy alternatives	Policy decisions	Policy specification	Field implementation	Operations
1	2	3	4	5	6
Search for information and theory; theorizing	Development of alternative hypotheses IMPLEMENTATION ANALYSIS	Decisions on experimental hypotheses	Experimental design and specification SPECIFICATION ASSESSMENT	Field implementation INTERMEDIATE AND FINAL IMPLEMENTATION ASSESSMENT	Operations OUTCOME ASSESSMENT

Williams 1975, p. 546

allocation, and systems for reward and punishment; and (3) the dynamic process of revising policy as changes in organizational resources and the environment change the context of the original policy problem." /p. 3/

There are parallels between the models of decision-making and the models of implementation. The differences between these two types of models, besides their focus on only one aspect of policy making, is that the elements of their internal dynamics, although common, have different importance and vary in the degree to which they bear upon the policy process. The circumstances under which these elements differ are the influential forces on the policy process. As noted above, heretofore little has been done beyond case studies to draw out these parallels, to identify common factors, and to identify the circumstances that create the differences.

An analysis of a policy process should not be limited to identifying these characteristics, but to expand to a comprehensive model that would encompass both decision-making and implementation and the internal dynamics of each. The conceptual level for this would be moving away from a fragmented approach to a contextual approach (see Lasswell, 1970). This approach would include the distinction between what is expected to be and what actually results in relation to the expected and the deviation from the expected. A study would include attention to participants, perspectives, situations, base values (i.e., the capabilities available for use in seeking to affect outcomes), strategies employed, outcomes, effects (Lasswell, 1970, p. 9), as well as the scope, context, and environment of the policy under consideration (Dror, 1971).

All of this would be done within Bauer's (1968) suggested "envelop of events and issues," that "refer to those events and issues that must be considered as the context within which to analyze a given policy problem. This 'envelop' will be distinctive of individuals, or at least classes of

individuals" (p. 17), and includes a need to pay attention to the circumstances surrounding the policy issue, both those directly related to the policy issues and the societal trends current to this issue. It is important not only to identify the string of elements within a policy process as existing, but also to note the dimensions of these elements at the various stages and contexts of the policy process, and as each stage or context of the process changes.

The discussion of modeling of the policy process, within either the decision-making framework or the implementation framework, on the discussions of comprehensive models implies a development in this direction. The development of a conceptual framework is progressing toward a more comprehensive model. The case study that follows serves as the basis for analyzing the elements of one observed policy process, from which components of a policy model will be discussed.

Chapter 3

ORGANIZATION AND ANALYSIS OF DATA

Structure of the Study

The basic assumption of this study is that there exists a process by which policy is developed and implemented. I am seeking to explain this process theoretically by extracting a general policy model from the more idiosyncratic process of a particular policy.

According to Argyris and Schon (1975), discovery can take three forms. An investigator can enter the "field" with a theoretical model in mind, looking for evidence to support this model. Selectively in gathering evidence could delimit the proof of the model, however. Another approach is to ask those in the "field" identify the normative process by which they operate. As Argyris and Schon state, "the theory that actually governs [an individual's] actions is his theory-in-use, which may or may not be compatible with his espoused theory; furthermore, the individual may or may not be aware of the incompatibility of the two theories" (p.7). That is, one may say what he/she thinks should be operative or believes to be operative, whereas he/she is in reality acting in another fashion. Argyris and Schon suggests that we learn of this "theory-in-use" from observation.

Although the present case study emphasizes the idiosyncratic, the process of analysis was toward an emergent theory of policy. This emergence of theory is possible through the method of constant comparative analysis (see Glaser & Strauss, 1967). The purpose of the study was not to verify, or to do research using, a particular theoretical perspective, such as a normative or analytic approach. Nor was the process eclectic -- that is,

it did not combine the best of all theories and methods -- because this would have been more confusing than informative. In addition, the researcher would still have been faced with the problem of proving a theoretical premise; this study was not intended to be a deductive analysis. Rather, a theory was generated from the data: "most hypotheses and concepts will not only come from the data, but will be systematically worked out in relation to the data during the course of the research" (Glaser & Strauss, 1967, p.6). Certain ideas or models can come from sources other than the data, although I have been careful, as Glaser and Strauss advise, to make the generation of theory from these insights explicit.

As stated above, the case study was used to discover the operative "theory-in-use" of this policy process. To study the process, however, it was first necessary to delimit its scope. Kurt Lewin's field theory (Larson, 1973) is useful for this purpose. This theory states that a frame of reference exists for any set of circumstances or behaviors. The frame of reference defines situations as limited to a scope within which essential variables can be located and observed, and their interrelationships determined (pp. 172-173). In this case study the frame of reference is determined by the interaction of policy and organizations. This limits the study to the circumstances and evidenced behavior related to this interaction.

The conceptual limits of a policy process can be defined further by considering that a policy process is couched in a variety of constraints outside the specific goal objectives. The policy is not limited to a "beginning" or an "ending"; it changes over time as it is implemented.

One therefore becomes caught in the web of attempting to explain what implementation means in terms of the policy, and how this can be viewed as a process—if process is the action that describes this. It is possible to describe the action that identifies the policy implementation process in terms of the diffusion theory of anthropology. A common focus of research on this theory has been the "diffusion" of one culture into others:

... new elements of culture are involved--new at least to the receiving or learning culture. This novel culture material may meet with anything from eager acceptance to bitter hostility. But since it does represent innovation and change, the traits that are being introduced will expectedly encounter some resistance. After all, they are foreign to the pattern of the culture on which they are impinging; and while some of the imported traits will happen to fit into the native pattern, or be neutral, others will violate or upset it. Or their acceptance may have unforeseen consequences that prove to be upsetting. It will accordingly be evident that intrasociety transmission of culture in time must normally tend toward persistence, but intersocietal transmission in space tend toward change [Kroeber, 1963, p. 220].

Parallel arguments can be made for the actions surrounding various types of policy as they are transmitted from organization to organization, from level to level within an organization, and over time. To understand the "flow" of policy from decision-making to institutionalization, especially in terms of the impact on the organization(s), the "diffusion" concept is useful. As the series of actions occur moving policy forward over time and across organizations, the changes implied will also meet with anything from eager acceptance to bitter hostility. Ultimately, change will result, but the shape or form of the change is often as unpredictable as is the force of the resistance to the change, although there is probably a relationship between the two.

This term, "diffusion," although fairly descriptive of these dis-
persive qualities of policy, is nonetheless inadequate for describing the

interactive processes that are involved. It is important to understand why certain changes will fit into preexisting patterns and why others will generate hostility. It is important, then, to note the "diffusion" processes of policy, across an organization or organizations, to look for evidence of acceptance or hostility, and to explore within the organization for the traits of the policy and the stage of its development, and to examine the organization itself as it incorporates the innovation or change implied in the policy.

Although the study of the whole policy process is a relatively new area of inquiry within policy analysis and organizational theory, there are many recommendations about where to begin such a study, general such as the kind of focus or an organizational aspect to be analyzed. These recommendations are often based in the disciplinary background of the researcher or in the researcher's particular area of interest. For instance, Berman (1978) suggests that "a natural starting point for empirical research is to describe implementation paths"¹(p.174). He elaborates:

It would be ... shortsighted to record decisions and events without taking into account the structure of the local delivery system that the project seeks to change. The gestalt of local system dynamics needs to be understood before analyzing the foreground of project implementation [p. 174].

This suggests an in-depth review of a particular policy situation done by collecting information on the dynamics of the policy events in the implementation process that are the focus of the investigation. Mintzberg (1976) calls attention to the structure of the decision-making process as an important variable in determining the complexity of the policy situation.

¹Implementation paths refer to the process by which input to the local delivery system of a government program becomes translated into practice by a sequence of local decisions. This sequence or path is not uniquely determined by the input.

Bauer (1968) has observed:

Generally speaking the policy research that has carried us to this point has been of two sorts. There has been research on large-scale problems with modest data-gathering activities, and the use of intuition to bridge the gaps in the data. There have also been very intensive data-gathering jobs involving minute-to-minute observation of important actors.

[p.24]

He suggests "developing an approach which uses very intensive data gathering selectively in key spots and which, at the same time, can attempt to deal with broad problems and processes" (p. 23; emphasis added).

This was the process by which the present study was conceptualized for data collection and analysis. Many of the recommendations noted above were utilized throughout the study. Although the background literature for this study includes several models of decision-making and policy analysis, the research was not restricted to one perspective or to predetermined units of analysis. Particular attention was paid to certain concepts that have proven to be theoretically relevant. Steinbruner's (1974) description of the decision-making process identifies the key variables as the actors involved, the value or objective, the outcome and how it came about, the options in the situation, the information used, and the environment, or "a present and future state of the world" (p. 16). These elements can be understood in relation to the dynamics of the policy process and the structure of the situation, and as being relevant to the conceptual analysis being done.

Radin's (1977) study of the first four years of Title VI enforcement is organized around three aspects of policy implementation: structure (perceptions of administrators of their political and organizational environment), law (as a tool in the process), and constituency (interaction

between the administrators and outside groups in their activities related to the policy). I have selected a similar tripartite structure to organize this study: context, roles, and process.

Context focuses on the environment of the actions of this process. Specifically, what factors serve as boundaries or constraints for policy action? For instance, what roles do time, scarcity of resources, type and availability of resources and manpower, or the nature of the issue play in the policy process and why? What is the code of rules of each organization? What other factors interface at this point?

When the context of a policy is examined, individual and organizational roles come into play, although their actions are in part determined by the context. One thus looks at who is involved in the policy process. What types of groups are involved and how are these groups structured? What is the type of their involvement? What factors (such as power or informal relations) determine their involvement? How do the groups interact? What are the patterns of communications interorganizationally and intraorganizationally? How do they affect the policy course? What are their value orientations?

Context and roles, in a sense, set the stage for this third element, the policy process. What determines the actual decision at each point (to do the investigation, to write the compliance plan, to take action as result of whatever New York City does)? This can be viewed from various vantage points: What type of process do the various actors follow to reach a decision: weighing alternatives, compromising stands, rationally deciding, muddling through, resisting any action, etc.? What are the priorities taken into consideration and how are they established? What are the "formal" (bureaucratic) and "informal" (organic) structures involved at various points in directing this policy? How have these

various aspects been influential? How is the process affected by values or by technological factors (e.g., statistical studies or law)?

This research has not been focused merely on a study of ill-observed factors in relation to a particular aspect of the organizational level (e.g., administrative) or one stage of the policy process (e.g., decision-making). Rather, this study examined the total policy process from the origins of the Gerry Report in the Office for Civil Rights (including relevant aspects of the history of that office) to its final dissemination in the New York City Board of Education. In order to examine various different ramifications of this policy, this study was designed to include the perspectives of key levels of policy determination: the Federal government (OCR), the local Board of Education (New York City), a local high school (one of the schools affected by the Gerry Report), and various interest groups as they interact with this process.

Data Collection and Data Analysis

For this study, a combination of research methods was used that fell under the rubric of qualitative field methods, using an approach that has been applied in a number of studies by the Horace Mann-Lincoln Institute. The perspective for this approach comes from Herbert Blumer (1969), who proposed that, instead of approaching empirical validation through "manipulation of the method of inquiry," one should take a more direct examination of the empirical social world. Most of the techniques used in this approach have been validated in a study of desegregation² from which the present study emerged.

² NIE Grant No. 400-76-0006 (1977)

The present study is based on the constant comparative method (Glaser & Strauss, 1967), in which each stage of research is an outgrowth of the preceding one. This process begins with the collection of information and the development of theoretical categories, which are analyzed and reexamined throughout the study as new data are collected and added.

In this type of approach, data collection and data analysis are conceptually close. In general, the selection of a data collection technique predisposes the researcher to a particular means of data analysis. In the constant comparative method, data analysis continuously refers the researcher to new directions and conceptualizing for data collection. The information, once collected, becomes integrated into the previously collected and analyzed data. The process of data collection and analysis is cyclical in any research endeavor, particularly so when using this particular conceptual approach.

There are two steps involved in the constant comparative method. The first step is the collection of data, which will be used both to guide further inquiry and to build concepts. At this stage, as Becker (1969) explained, "The observer looks for problems and concepts that give promise of yielding the greatest understanding of the organization he is studying, and for items which may serve as useful indicators of facts which are harder to observe" (p. 247). The second step is to draw preliminary conclusions, first noting that something exists or that two things were observed to relate in one instance. These facts later are tied in with other facts as categories are organized. Careful attention, therefore, must be paid to (a) what facts exist, (b) the types of relationships of facts, and (c) the patterns of relationships of facts.

Four analytic approaches were used to inform data collection efforts and data analysis. The assumptions inherent in these approaches require that particular kinds of data be collected.

The first approach is event analysis. This approach is a method of collecting and analyzing information that is consistent with Lewin's field theory, whereby a particular event is studied within a frame of reference. An event is defined as a stream of behavior that has at least a time attribute. Events, according to Burnett (1973), are also defined in terms of the location of their occurrence. In the present research, the policy is the overriding event to be studied; the design of this investigation can thus be viewed as a grand event analysis not restricted by place orientation. The grand event, or "macroevent," can be seen as made up of a series of "microevents" that are linked across time. The macroevent is the policy process; the microevents are those that are described more specifically in terms of time and place.

Event analysis proceeds in the following manner. With a particular occurrence as the starting point, the researcher can begin to frame questions based on the fact that a given event involves actors, that they have a form of involvement, that this involvement is a result of another event, and that something will happen after the event. These factors form the basis for data collection efforts, whether through interviews or observation or archival review.

A specific technique for investigation a microevent is the Rashomon technique (Ianni, et al., 1978), a method that describes an event from the viewpoints of individual participants. Data developed through this process help to reveal the perceptions of various actors and their interactions. This same technique was also used to validate information obtained from different sources.

Event analysis and the Rashomon technique were used to examine a particular event from all sides, be it a complex event, such as the issuing of the New York City Review letters to New York City Board of Education, or a small event, such as a phone call or a meeting between two

agencies. An event might also suggest that something will occur in the future (which thus directs data collection) or suggest that certain events preceded this event (that require follow-up research), and can be used to probe for contextual information about this event or related events.

This procedure was combined with network analysis as another data collection approach. Network analysis (Burnett, 1969) help to organize the data and also indicates further areas of investigation, but is based on people and their linkages rather than on the linkages of events. This approach involves abstracting a network of people who were involved in an event, as well as abstracting networks of organizations and individuals who were involved in events across the policy process.

In using this approach, each person interviewed was encouraged to describe the role involvements of other people as well as their own. Additional information was thus gathered on who was working with whom and under what circumstances, and identified how much other people were aware of these involvements.³

Theoretical preparation for this study also gave direction to data collection. I pulled together various theoretical works on decision-making, implementation, social organization, and policy analysis. From this literature I was able to identify a number of variables critical to understanding policy development and organizational behavior. These variables formed the basis for a general interview protocol. This helped to generate more information during interviews or archival review than would have been possible by simply following up on previously gathered data. (See Appendix A for a copy of this protocol).

³There did come a time when I knew more about the activities of others than the person being interviewed did. At this point, I used some of the more neutral information I had collected to encourage or stimulate more information from the respondent. This worked to uncover more information or to verify limits on their knowledge.

Finally, the subject of study, the policy process as a whole, itself suggested points for inquiry. Because the study was not limited to only one point of the policy process, I knew to look for various stages making up the policy process. When a decision on the review was made at one point, say by OCR, I would later inquire at the Board of Education for the impact that might be felt or responded to.

Methods for Acquiring Data

Data collection for this study utilized many techniques that use these various methodological approaches: interviewing, participant observation, and archival research. Most of the information was collected through interviews. The quality of the data depended on the memories of those interviewed and on their ability to describe objectively the events under question. Information was cross-checked through other sources of information to the greatest extent possible. Interviews were initially set up according to who the main characters in the policy development were perceived to be, whom others identified as main characters, or who, because of their role, had a good perspective on the events that happened. Other individuals were interviewed as they were identified or became involved in new events.

The policy process involved two organizations very directly, but the research was not limited to these two organizations.

Political activities reflect the influence of individuals who seek to satisfy their personal and institutional needs by the decisions made in an organization. These individuals may be inside or outside the organization. What ties them to it is their belief that they may be affected by the outcome [Mintzberg, 1976, p.262].

The activities also involve those individuals who believe they can affect the outcomes of decision-making, whether they are in the primary organization or not. For this reason, interviews were not limited to participants from the Board of Education and the Office for Civil Rights. In

the field theory sense, these other individuals are critical to the study. Thus, interviews were also conducted with representatives from interest groups who were "involved" in the review of the New York City schools and with individuals who might be directly affected by the policy -- the school system staff.

In most instances, there was little difficulty in getting interviews. Some interesting patterns did develop in terms of who would allow interviews and who would not, and the types of information they would share. One can only guess why some people would grant extensive interviewing time no matter how busy they were. They may have been frustrated at the turn of events, as was common throughout this policy process, or enjoyed having a listener for their own analysis.

Permission for interviews was difficult to obtain in two situations. It is possible that uneasiness about future events might have inhibited these people. One place where some people were reluctant to be interviewed was the Board of Education. Those who were sympathetic with the issues were willing to be interviewed. Those under the most pressure were reluctant, however, either because of a concern for confidentiality, which created legal constraints, because of the lack of time, or because of a disinclination to discuss issues with outsiders. The second situation in which people were reluctant to be interviewed was during the time OCR changed administrations and was reorganizing itself. Members of the new "regime" were very closed about the events and would allow only very controlled interviews with little elaboration on the information shared. This might have been because the new administration had little understanding of the situation in which they found themselves, although they were in the position of negotiating on civil rights violations they had not

been involved in determining. In both situations, one might guess the individuals or agencies had something to hide. These were speculations made by others interviewed who asked about my success in interviewing participants from other agencies. Often, those drawing these conclusions had had a great deal of contact with the individuals or agencies in question.

Before entering the field to collect data, I began my research by using newspaper accounts of an event that had occurred on this policy issue. This provided a starting point for questions and for individuals to contact. For instance, when the first OCR letter was sent to the Board of Education, there were extensive write-ups in many newspapers about the study, the results, and the current problems of the New York City schools. In this first case, I called the OCR regional office, where I was referred to a woman who eventually became one of my more reluctant informants. I began by asking her who was involved in the study and how the study had been done, by acquiring a copy of the letter, and by obtaining the names of several people at both the Board of Education and the Office for Civil Rights in Washington who were involved in the study or who would be able to give me more information. The same approach was used when the second letter was issued to the Board of Education.

Information collected from one interview, either verbal exchange or archival material, served as clues for other interviews. I began to pull

together names of individuals who were directly involved in the overall policy process and to whom I could go to collect further information.

The design of the study served as a means of identifying new sources of information for interviews. The design called for consideration of as many phases of the policy process as possible, including those individuals or organizations who were or would be directly involved in this policy process. Certain sites were therefore selected purposely for data collection. For instance, the principal of one of New York City's high schools was interviewed to see what information on this policy issue had filtered through the school system to the delivery level. The principal could describe the actions of the participants from this vantage point, as well as indicate others he knew to be involved, and who he thought were important to this process.

During this interview process, a concerted effort was made to obtain access to several types of archival data. The first type of archival information was that directly related to the Report: the actual Report (Letters One and Two), memos pertaining to the Report, analyses of the Report done by the Board of Education and by interest groups, background research to the Report, and so forth. The second type of archival information was the correspondence between OCR and the Board of Education, and between these agencies and the interest groups. This information was used to develop a perspective on lines of communication and the networks of people organized from particular vantage points. A third source of archival information was court transcripts. This particular policy event became heavily involved in the judicial process as some of the participants tried to encourage certain actions or prevent other actions; many pertinent on the background, the people, and the reasoning behind certain events were recorded

in the court records. Because of the nature of this type of information, its validity can almost be guaranteed. A fourth type of archival data was newspaper accounts and other public reports commenting on the events. These helped to record events, to identify participants, and to summarize viewpoints. Finally, this event was related to other types of policy for many of the organizations involved: law cases, civil rights regulations, etc., which were identified and taken into account as the research was conducted.

A third data collection method was participant observation. Given the focus of this study, it was very difficult to actually observe a policy process, as Mintzberg (1976) described. But the nature of the organization that are involved can be observed, which helped in developing an understanding of "the gestalt of local system dynamics," as Berman (1978, p.174) suggested, and in observing activities that bring them together on this policy issue. At three different points, I was able to do this, and therefore was able to verify some of the hypotheses I was developing, or to collect additional information to add to my perspective.

Shortly after I began my research, I obtained a short-term consulting job at the Board of Education in the Deputy Chancellor's office. At this time (early 1977), the Deputy Chancellor had been given the responsibility for planning a response to the first letter from OCR. Although I was working on an unrelated issue (the New York State school finance case), I was able to get to know the office staff, to become familiar with the atmosphere, and to see how the staff was working on the problem. At the completion of my project, I obtained permission to interview four staff members, including the Deputy Chancellor, on how they were develop-

ing the Board of Education's response to OCR.⁴ Because I had gotten to know the staff, they were willing to share information and time with me. I was also able to return at a later time for additional interviews.

Another occasion arose for on-site participant observation. During this period, I was also an intern at a local high school. This provided me with the chance to talk to the principal and staff about the Review, and to hear them discuss it among themselves (it was a popular topic of conversation after the two letters were released). My relationship with the principal was such that I was able to return to the school at infrequent intervals for casual interviews to follow up on events that had occurred in the policy process. He was willing to share documents that had been sent to him by the Board of Education or by the professional administrative association. His assistance was invaluable in documenting the flow of information through the New York City school system.

During the Summer of 1977, I worked as a summer intern at OCR in Washington. Although I was not involved with the New York Review, I was around those who were; I was therefore able to meet, informally, some of those people who had been involved in the study from the beginning. Toward the end of my work there, I interviewed those individuals who had worked on the Review. This internship provided good insight into how work on the Review and other OCR activities was conducted. The agency was going through reorganization at this time; people spent less time

⁴ The Deputy Chancellor also taught a policy analysis course during Spring 1977 at a local university. This course focused on four current policy issues, one of which was the OCR complaint. He described at great length how his staff was going about their review, and how they worked out a policy analysis. I had a chance to sit in on or record this lecture series, thereby obtaining good background on how this office was dealing with the issue.

working, and devoted much of their conversation to comparing the new administration with the old. The regular staff also spent a great deal of time explaining the organization to the summer interns. In addition, I encouraged people to talk about a review in terms of data collection, processing, and analysis problems. I thus assumed the role of participant observer, although taking notes was sometimes difficult.

While working at OCR, I became familiar with the organization; I learned where archival data were stored and what information was available upon public request. I obtained a great deal of information on the organization of HEW in general and OCR in particular. I also learned how to interpret civil rights regulations, and learned the procedure used for reviewing ESAA⁵ applications. During the final weeks of the summer, ESAA applications from the New York City districts were being reviewed; I was able to observe this process from a distance.

⁵ Emergency School Aid Act (ESAA), Title VII of Public Law 92-318, as amended by Public Law 93-380.

ESAA is federal funding to assist in the elimination of minority group segregation and discrimination in public schools and to aid school children in overcoming the educational disadvantages of minority group isolation.

Data Aggregation and Data Analysis

Implicit in the constant comparative method is immediate and continuous analysis of all data collected. To facilitate this, data are coded and catalogued as they are collected. New data are compared and integrated into a developing analytic framework. Coding of the data, for both aggregation and analysis, begins with an examination of data collected to identify the general units that can be identified as "emergent categories." In this study, categories were not identified a priori from the theoretical background. Rather, each interview or observation was reviewed and coded, event by event, according to its inherent themes. Coding was not done by fact or action, such as "suit" or "investigation," but by ideas or relationships — e.g., reaction to data collection forms, OCR's perception to New York City — the things that would reveal what affected how the process was done, rather than factors that would merely describe the process.

The comparison of elements was conducted across the life span of this policy. The length of time involved in studying this one policy's process provided a richness of data that allowed me to look for re-occurring patterns of actions or relationships. This strengthened the significance of events and of their relationship to other events. For example, the significance of the impact of the change in leadership in OCR is increased when a similar event occurred at the Board of Education — the Deputy Chancellor left midway through the policy process. Although the two events are not equal, they have similar properties that allow comparison and abstraction about the significance of change in leadership during the policy process and its impact on the flow of events.

According to the constant comparative method, lower-level categories emerge as preliminary abstractions are made from the data. This begins

with the first review of data as they are collected. This process continues throughout data collection efforts; a higher level of categorization occurs as concepts are developed and integrated and as events are compared internally. Theory is developed as data are collected and analyzed. It is to be expected, then, that preliminary hypotheses are disjointed and seemingly unrelated. Through comparative study during data collection and analysis, these hypotheses become more integrated, developing into a theoretical guide for data verification. This is not to suggest that analysis reaches a stopping point, however. Rather, as a substantive model emerged in this case study, it was compared to existing formal models of decision-making and the policy process. Theoretically, this analysis and comparison of the data to the case study and to other studies of the policy process could continue indefinitely.

Names of individuals identified or interviewed were catalogued to have as complete an account about their involvement in the process as possible. Each event was described and coded as a record of occurrences. Each item was given a code number and was maintained in a file of the summary of each item in order to record all data. The data were coded for the purposes of this research project only. As new data were collected, additional categories were created, as the need arose; previously collected data were not recoded by these new categories, however.

Coding and cataloguing the data encouraged me to make use of the constant comparative method of analysis through thinking over the significance of each event and the data that had been collected before. As methodological ideas or theoretical ideas occurred to me, they were written out and catalogued also for later review. In this fashion, I was able to keep track of both theoretical developments and the data collected.

Validity

There are problems of the validity of the data that are collected. Vidich and Bensman (1954) identify four types of errors common to field methodology and the use of informants and interviews: (1) purposeful intent, (2) the temporary role of the "respondent," (3) the psychology of the respondent, and (4) the involuntary error. Because this study utilized a variety of data sources, I was able to verify information across sources, thereby reducing the amount of misinformation, purposefully given or otherwise, through my interviews. I needed to analyze responses in light of other information collected, however, in order to weigh any possible biases or unevenness in the data.

Vidich and Bensman (1954) suggest that, to avoid the problems of researcher bias, the researcher approach the data by:

being sophisticated in his evaluation and interpretations; by not being deceived by the surface meanings and circumlocutions of his data; by not being too anxious to find confirmations to his theories; and by employing artistry and integrity in obtaining and interpreting the data [p.26].

My informants helped in verifying data; I could test out plausible theories about the case study with them. Discussions with research advisors helped to provide additional objectivity, especially on theoretical ideas, as the analysis developed.

Validity in research can present a problem beyond the question of the quality of individual pieces of data. Hypothesis-generating as well as hypothesis-testing research can be difficult to support when using a single case study research design. Campbell (1975) has explored the advantages and disadvantages of this method. In an earlier period of his work, he criticized case studies for having "a total absence of control as to be of almost no scientific value" (p. 179). He further stated

that it "seems well-nigh unethical at the present time to allow, as theses or dissertations in education, case studies of this nature (i.e., involving a single group observed at one time only)" (p. 180). But he later reconsidered his stand, and paraphrased a discussion he had with Howard Becker:

Almost invariably the social scientist undertaking an intensive case study by means of participant observation and other qualitative common sense approaches to acquaintance ends up finding that his prior beliefs and theories were wrong. If so, this is an important fact, and one worth systematic documentation [p. 182].

Campbell points out various steps to keep in mind as a case study is used for hypothesis-generating research. First, the researcher should keep track of which points in a theory fit and do not fit a case study. (This tests the soundness in theory and helps to delineate the areas in which it can be applied.) Second, the researcher must make clear when denoting agreement between implications and fact whether the hypothesis was selected a priori or a posteriori to the findings. Finally, the researcher must keep in mind the fact that, when testing data with multiple hypotheses, there is a good chance that at least some will be significant. Campbell concludes by suggesting that, when a research is doing an

hypothesis-generating case study...one should keep a record of all of the theories considered in the creative puzzle-solving process. To represent the degrees of freedom from multiple implications, one should also keep a record of the implications against which each was tested, and the box score of hits and misses [p. 188].

The literature reviewed in the proposal stage represents the theory that was considered at the beginning of the study. Although the theories of decision-making discussed at this stage represent a distinct set of implications for the research, they were not used to guide the research.

As a final step in the analysis, however, the theory generated from the present study is compared to the earlier theories as a process of checking "hits and misses." The results of agreement and disagreement between data and theory are discussed in terms of the lack of fit. This relationship is a significant part of the analysis.

Limitations

There are several limitations to this study. First, I was unable to be everywhere at once. Although the focus of the study is a single policy and its evolution as it is implemented, that process involves numerous other policies as it unfolds. The Office for Civil Rights requires compliance with Federal regulations, although this is not its only activity; because of this, the New York City Board of Education is forced to reexamine and to change many of its policies concerning school administration and management.

Such a value-laden policy pertaining to civil rights with so many possible ramifications necessarily involves many interest groups. Understandably, I was unable to document all the activities of all these groups as they are related to this policy process, although I paid attention to these factors as much as possible. Direct access to many of these institutions, as described above, provided more information on the "dynamics" of the policy process.

No matter how holistic the approach to studying the policy process, it can never include all the facets of action related to a particular process. According to Mintzberg (1976),

Strategic decision processes typically span periods of years. Often forced to study the process after completion, therefore, the researcher is obliged to rely heavily on interviewing. The best trace of the completed process remains in the minds of these people who carried it out [p. 248].

Because of the constraints of the time, this research relies heavily on interviewing the people involved in the policy process; it is they who provide the scenario of what happened and why. Cross-verification of information helps to validate the information collected and substantiates the reliability of the interviewees.

Just as decision-making takes several years, so does implementation. Although I view the policy process as including all phases from decision-making to implementation, attempting to document the entire process would be more than adequate for this study. Thus, I arbitrarily ended this study in March 1978, although I continued to keep track of various issues through the analysis and writing stages.

Time served as a constraint in other circumstances. Time was important in determining when data could or could not be requested. After a while, this relationship became predictable. As noted above, during the time of negotiations between OCR and the Board of Education, information about this event was not available from these two agencies nor from any of the interest groups, because they were also waiting to see what would develop. I therefore had to limit my investigation to between events (except when I was able to do participant observation). People were more willing to speculate about what had happened or would happen between events. As new activities transpired, the time of the policy process was lengthened, if not affected, by the turnover in the staff at most of the agencies involved in the review. Shortly after the OCR letters came out, the director was removed from office, and a new director was selected a few months later. The Board of Education also lost their Deputy Chancellor, a key person in the initial interpretations of the OCR letters. He left after the summer negotiations, but was not

involved with these. Finally, as negotiations on the second letter approached, the Chancellor of the Board of Education resigned, and a new one was selected. Although these changes had interesting effects on the policy process, I stopped my data collection at this point and decided it was enough to keep track of two changeovers.

These administrative changes confounded my ability to develop an informant relationship with people in the agencies. Just as access was being developed, the staff would disappear; new people had to be approached and a new relationship developed. These individuals were new on the job, they were a bit suspicious of outsiders, and they were often unable to give background information or to predict coming events because their own knowledge was still limited.

The nature of the study itself presented certain constraints. Because most of the issues continued to be unresolved, the setting remained very volatile. Some individuals were very willing to give out information, although the politics of the situation biased the situation in ways that were not always clear. Others did not wish to talk at all, or would give only very limited information.

The legal boundaries of the information also created a problem. Those in public agencies, such as Federal offices, were reluctant at some points to provide the requested information of this study. Many Federal employees felt that they had to protect the interests of their own contacts or co-workers in New York City, and would not give out information on the Review itself beyond the facts contained in the report. The most crucial information was that of the negotiation. During negotiations of plans to resolve the violations, I was not privileged to any information concerning these very negotiation. Again, since it

was something in process, the officials were not willing to discuss it. Even afterward, they spoke very little about points of conflict, who was present, and how the negotiations were done. The only "information" available in this area was speculations.

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PART TWO
CASE STUDY

Chapter 4

THE SETTING

The Office for Civil Rights

The Office for Civil Rights (OCR) is a small agency within the Office of the Secretary, Department of Health, Education, and Welfare (DHEW). OCR was established in 1966 to carry out the policy directives of the Civil Rights Act of 1964. Unlike the U.S. Commission on Civil Rights, which is an investigatory and advisory agency, the Office for Civil Rights is a compliance agency. Although HEW issued guidelines to determine if school districts were making sufficient progress in eliminating racial segregation (and therefore to determine whether these districts were eligible to continue to receive Federal aid), actual enforcement activities were carried out by the Department of Justice. "The Attorney General was empowered to institute suits to effectuate desegregation of schools and also to intervene in private suits whenever persons had alleged denial of equal protection rights and the case was of 'general public importance'" (Reutter & Hamilton, 1976, p.628).

The characteristics of this agency and its administrative problems were largely established in the controversy that created it. Radin (1977) notes that over 80 advocacy groups from various racial, economic, and religious backgrounds pulled together in the lobbying efforts for this Act. Many of these efforts were organized through the Leadership Conference on Civil Rights; these lobbying efforts were the culmination of the civil rights movement.

One provision of the 1964 Civil Rights Act was that Federal funds

could not expended in operations in which there was discrimination on the basis of race or color. The impact of this provision in education was not realized until two or three years later, when Federal involvement in education expanded. Until the 1970's, the Federal government had a small but stable role in the public education. The ideology of local control of education was honored. By the 1960's, however, the Federal government began to take a more active role in education. "That new role -- most dramatically illustrated in the Elementary and Secondary Education Act of 1965 (ESEA) -- meant that federal policy would affect school financing, curriculum, classification of students and teachers, and placement of both students and teachers in classrooms" (Radin, 1977, p.4). The Federal role increased dramatically through the combination of ESEA and Title VI of the Civil Rights Act.

The section of the 1964 Civil Rights Act that potentially had the most sweeping effect was Title VI -- a general prohibition against discrimination in grants, loans, or contracts by all federal agencies. This mandate to eliminate discrimination in programs supported by the federal dollar was not limited to activities directly administered by the federal government. Theoretically, at least, the prohibition permeated throughout American society, extending to state and local public programs receiving federal support and to private activities (such as projects in private colleges and universities) that received federal monies for specific programs (Radin, 1977, pp.6-7)

In 1966, after two years of controversy over how best to supervise desegregation and civil rights activities under Title VI, the Federal civil rights effort was centralized in one agency, the Office for Civil Rights. In 1967, Congress placed all Title VI activities in OCR; the Office of Education (OE) continued to manage Title IV programs (technical assistant to desegregating districts). The actual supervision of these activities, however, was decentralized to the ten regional offices, an arrangement that created a great deal of conflict within OE and HEW.

During the next few years, the scope of civil rights protection was expanded in part through amendments to the Civil Rights Act of 1964. Title VI of the original Act was designed to protect individuals from discrimination on the basis of race, color, or national origin. Title IX of the Education Amendments of 1972 added the prohibition of discrimination on the basis of sex. Section 504 of the Rehabilitation Act of 1973 prohibited discrimination on the basis of handicap.

The enforcement of civil rights policy has been complicated with problems of how this should be done. The strain toward organizational efficiency and the difficulties involved in enforcement activities are explained by Radin (1977):

Throughout the period studied (1964-1968), officials charged with enforcement of Title VI in federal education leaned toward a definition of organizational success that was defensible as a neat, efficient operation. Civil rights activities were pushed toward a self-contained status, emphasizing routinized work, precisely defined goals, and explicit tasks. This urge never really took fullblown shape because it was clearly incompatible with the attainment of Title VI's ultimate goal -- the elimination of discriminatory patterns in the method of allocating federal education dollars. That is, the reality of HEW organizational politics and the ideology of American education were such that messy organizational functioning was inevitable, whether or not the decision-makers anticipated it and devised a neat organizational form [p.188].

The characteristics inherent in the enforcement of civil rights policy has never been fully examined as organizational tasks for which a model must be designed. Rather, a management model has been fit to a task area, seemingly ignoring the characteristic difficulties.

By 1972, OCR was increasingly criticized for the way it carried out its responsibilities. First, it was criticized for where it concentrated its enforcement efforts. Second, it was criticized for how long it took to actually reach civil rights enforcement goals. On the other hand, some critics felt that OCR concentrated too heavily on discrimination in the South while ignoring the severe problems of the North. On the other

hand, critics thought that OCR was dragging its feet on following through on complaints and enforcement efforts. The credibility of the agency was on the line when it began its investigation in New York City in 1972.

The investigation of the New York City schools marked the beginning of a new effort at OCR to make every school system accountable, starting with the major urban centers. This effort was directed at northern districts as well as southern ones.

OCR had historically been oriented toward desegregation. Because there are no acceptable explanations for racial segregation in southern schools, OCR never had to deal with "issues." During its first five years, the agency had concentrated on what school districts were going to do about desegregation. Not until they started to investigate northern school districts (in 1971) was OCR forced to deal with the more complicated issues of discrimination, rather than just desegregation.¹

Two court decisions had a tremendous impact on how OCR did its job. In Adams v. Richardson,² OCR was criticized for, among other things, not taking appropriate action to end segregation in public institutions receiving Federal funds in ten southern and border states. The court order in this case specified time lines and the work to be accomplished as OCR conducted its investigations and follow-up activities. The ruling in the second case Brown v. Weinberger,³ extended these guidelines to the other states in the country. This case also made

¹Although OCR had investigated Wichita and Boston (both northern schools) in 1969 and 1970, they were basically still involved in desegregation cases; the law very clear about what was to be done. In beginning this investigation in New York City, OCR was thrust into the very complex and technically involved area of compliance investigation.

²C.A. No. 3095-70.
³417 F. Supp. 1215 (DDC 1976)

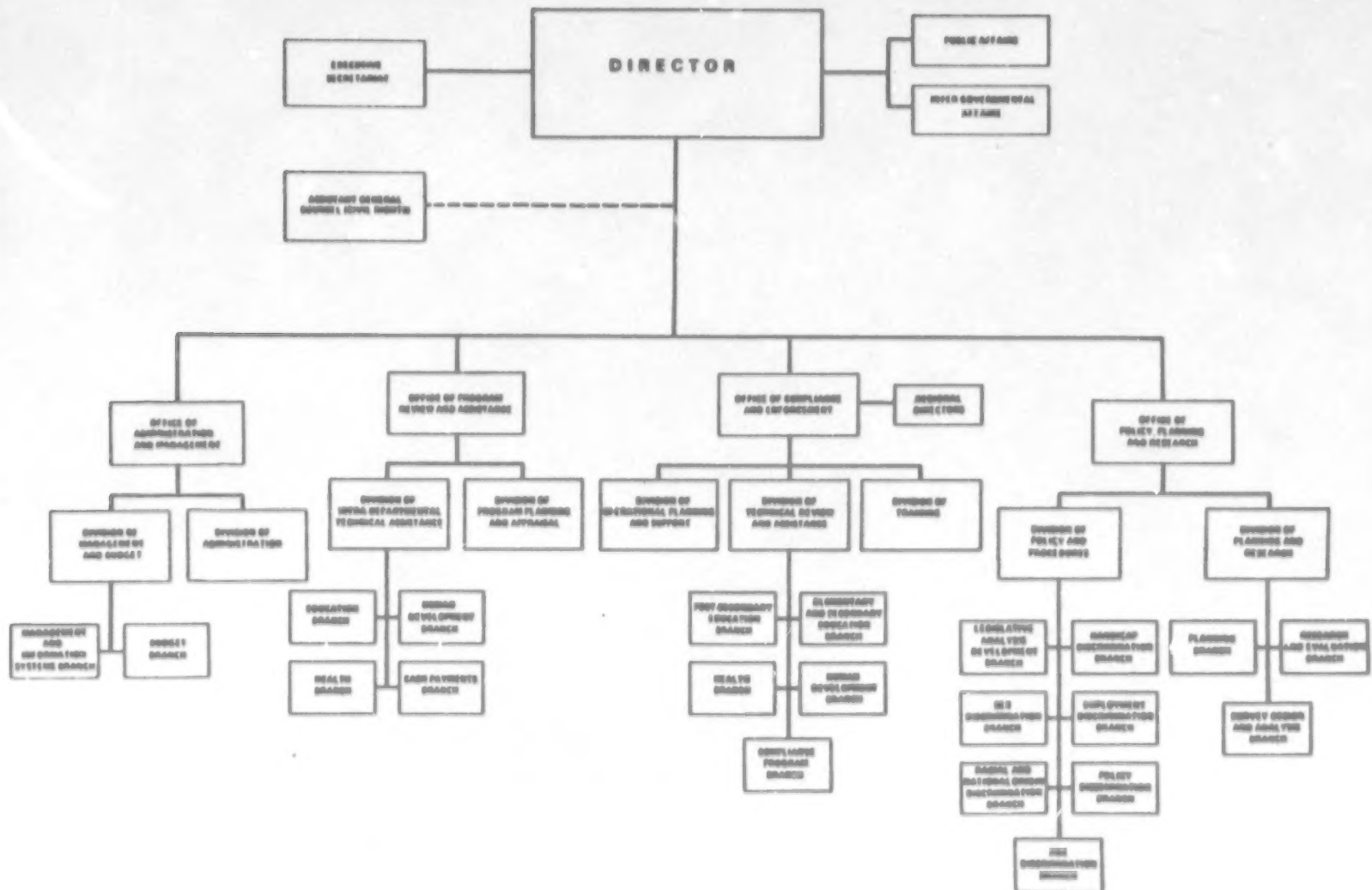
the point that OCR was slow in concluding its investigations. This ruling is usually referred to as the Sirica order, after the judge in the case. If OCR wanted to change the time lines or the work load, the agency would have to appeal to the court. These two cases represent an effort on the part of interest groups to make OCR accountable in its responsibilities to investigate complaints and to follow with enforcement efforts in the areas of race, sex, and national origin discrimination.

This was the atmosphere in which the OCR investigation of the New York City schools was conceived and begun. Although OCR was under pressure from interest groups to pursue civil rights enforcement, the agency received very little support from the administration. OCR was created when Lyndon Johnson, a Democrat with a strong commitment to civil rights, was president. In the early 1970's, however, Richard Nixon, a Republican, was president. Civil rights had a low priority in his administration.

OCR was reorganized several times during the course of the New York City investigation and enforcement efforts. A reorganization usually took place each time a new director was appointed. The

Historically, local investigations had been conducted by regional OCR offices, rather than by the National Office in Washington. New York City is located in Region II, which includes New York, New Jersey, Puerto Rico, and the Virgin Islands. The investigation of the City's schools, however, was designed by and conducted from the National Office. The Review did not fit neatly into the organizational structure of the National Office, and the agency had difficulty managing it. By the time the Democratic administration took office in 1977, the Review had become too politically sensitive to refer many activities back to the Regional Office.

OFFICE FOR CIVIL RIGHTS



Organization of the Office for Civil Rights

Director: David Batel

1977

Throughout the NYC Review, criticisms of OCR's management and investigative styles continued. Several major criticisms represented as strong an effect on these styles as had the Adams and Brown cases. Interest groups were still unhappy with the effectiveness of OCR's compliance efforts. In the fall of 1977, the leadership conference on Civil Rights sent a letter to David Tatel, director of OCR, commenting on the proposed Annual Operating plan for OCR for Fiscal Year 1978. In their cover letter they underscored their primary concern:

We fully appreciate the enormity of the task of creating an administratively effective agency which will promptly come into compliance with current Court Orders and statutory requirements. At the same time, we can not condone three or more years of non-compliance, staggering and increasing compliant backlogs, lack of policy determination, personnel inefficiency, high vacancy rates, and inattention to systematic problems of sex, handicap, national origin, and race discrimination. The projection for Fiscal Year 1978 that only 10% of newly received complaints will be investigated and the estimate that individual investigators will handle on the average only four complaints a year are particularly intolerable. Commitment to civil rights in these days is judged not alone on your personal convictions, but also on your ability to produce results." (Phyllis McClure, chairperson)

An analysis of OCR's annual operating Plan and a discussion of the allocating of time and manpower to the Big city Reviews accompanied the letter; the Committee pointed out that the four reviews have absorbed inordinate amounts of OCR resources over a period of several years, and experience has shown the longer their reviews proceeded the more staff it consumed. It was their opinion that, the consumption of staff resources devoted to these reviews could not be justified when measured by the paucity of concrete results that have been obtained. It was their conclusion that there was no justification for continuing all four of these reviews on a full-scale basis. A report, "The Carter Administration and Civil Rights: An Assessment of the First Year" was published by the Leadership Conference

on Civil Rights. In this, Phyllis McClure analyzed the current state of civil rights enforcement in education, she characterized it as mixed, having signs of progress as well as stalling and inaction. The report pointed out the inconsistency in the leadership for education and civil rights. An example of this was given. Secretary of HEW Joseph Califano at one point made a statement on civil rights policy in which he was quoted as saying: "we have no desire even to cut off funds to any school district or other educational institutions. But to ensure compliance with civil rights laws is to make clear that we will order fund cutoffs if we must." According to McClure's report, he later contradicted himself months later when he described the cutting off of school funds as an "atomic bomb party."

Another example of leadership problems was the fact that five years after the Enactment of the Rehabilitation Act (1973) OCR finally issued the regulations defining local education agencies responsibilities in providing equal treatment for the handicapped. Other areas of mixed agency performance are as follows. HEW has failed to establish adequate standards to prevent sex discrimination by education institutions. Moreover policies regarding provision of equal education opportunity for non-English speaking children are inconsistent in OCR and OE. There is a lack of policy guidelines for non-discriminatory pupil assignment in northern and western schools.

The report also pointed out the need for staff to handle the backlog of complaints and needed compliance reviews. The report was skeptical, however; while it pointed out that Califano had agreed to seek Congressional approval for 900 new positions at OCR, the agency was nonetheless inefficient in handling investigations and in conducting compliance reviews. OCR was characterized as poor in investigation and erratic in resolving complaints. Fund termination was rarely used as a means of enforcement and compliance.

Serious plans to reform OCR and its 10 regional offices were developed by several groups. One reason for this attention was because of claims of "contradictory civil rights policy pronouncements emanating simultaneously from various regional offices" and because of conflicts between local and state education agencies and OCR over rulings. A group of Republicans from the House of Representatives known as the Wednesday Club had studied the problems of OCR and had been in the process of proposing a concentration of all regulatory power for federal civil rights programs in a single agency, such as the Justice Department.⁴ Ex-Director of OCR, Martin Gerry, was an active member of this group and this study.

Another recommendation for change was from a Republican Representative; he suggested OCR be enlarged to be able to handle better its enforcement efforts. The representative had attempted this proposal the fall before, but had failed when OCR Director David Tatel had not been able to describe the specific increase in staff needed. This year, in light of court pressure to reduce the backlog of complaints, Tatel had a better idea of the additional staff needed (1,256).⁵

As part of OCR's Annual Operating Plan 1978 (AOP), the number of complaint investigations, compliance, civil rights surveys and technical assistance efforts planned for that year were outlined. According to the Education Daily OCR is said to have begun its fiscal year with 3,097 complaints on file (2021 under investigation and 1070 "backlogged"). OCR expected to receive approximately 3,334 new complaints. The AOP outlined those cases to be completed by 1978 and 1979. The agency planned to devote approximately 55% of its personnel time to these complaints and 45% of its

⁴American School Board Journal, January, 1978.

⁵Ibid.

personnel time on compliance reviews, in which OCR selected the sites. The agency anticipated conducting 276 compliance reviews, 135 of which were currently in progress.⁶

OCR was not the only agency considered for reorganization. There were also efforts to develop a Department of Education, separate from the current Department of Health, Education and Welfare. In August 1978, the House subcommittee debated over the Education Department bill. Included in this debate were plans to allow the Director of OCR to report directly to Congress on OCR activities, allowing the Education Secretary a chance to comment on all reports on noncompliance. The OCR director would be given authority to collect or coordinate the collection of data necessary to insure compliance with civil rights laws, and could appeal directly to Congress if budget cuts are detrimental.

Other suggestions came in March, 1979. According to the Education Daily, civil rights leaders were pressuring Congress to strengthen that aspect of the proposed education department bill. They wanted OCR, in this Department, to be able to appeal budgetary issues and to act independently of bureaucratic channels for government contracting. Previously, these channels had hampered OCR's ability in its enforcement responsibilities. They also recommended that this new office be given administrative autonomy over personnel, especially attorneys and consultants.

⁶ Education Daily, February 23, 1978.

⁷ Education Daily, March 28, 1979.

The Board of Education of the City of New York

The Board of Education of the City of New York (hereafter referred to as the Board of Education) and the City's schools have been the subject of several major books in recent years. These include The Great School Wars (Ravitch, 1974), which examined the history of the New York City schools and the effects of politics on the Board of Education; Decentralization and School Effectiveness (Zimet, 1973), which studied the issues behind the school strikes in 1968 and the struggle for community control of the schools; and 110 Livingston Street (Rogers, 1968), which described the bureaucracy of the schools and its politics during the 1960's.

For many years educators have debated whether the New York City schools have succeeded or failed. Part of this debate has focused on how success and failure are determined and part on whose success or failure is being measured. The students and their needs have changed; many critics cite this as the cause of the school system's problems. Rogers (1968) summarized the debate on this point:

There are some astute students of the New York City school system who claim that it has functioned poorly for several decades and that the notion that it was a top-grade system until the vast influx of Negroes and Puerto Ricans is a myth. Louis Yavner, for example, a lawyer who co-authored a pioneering two volume study of the system in 1951 and did others before then, holds to this view. Administratively, the system may never have been a viable one, and it may have suffered from many pedagogical shortcomings as well--regardless of how much better it was than other big-city school systems [p. 4]

These criticisms, whether based on myth or reality, have not deterred people from trying to influence the decision-making structure of the Board of Education and to change the system to be more responsive to particular sets of needs.

Concern over the administrative problems of the school system is traditional in New York City, as Ravitch noted:

The poor performance of large numbers of black and Puerto Rican children was the chief cause of criticism of the school system in the 1960s. It was not providing basic literacy to a sizable proportion of its students; it was not abating crime and poverty; it was not molding good citizens; it was not preparing young people for useful work; it was not eliminating social and economic inequality; it was not spearheading the reform of society; it was not producing happy, fulfilled human beings. Reformers did not realize that the same charges had been leveled periodically over the same 150 years, or that the schools had never fully accomplished any of these ends. But by the 1960s, an almost mystical belief in the power of the public school to change society and to save individuals had become so ingrained that the system was certain to disappoint the gentlest of critics [p.400]

The school system was assessed by the output of its system--what it can do for students to prepare them for their future.

The New York City schools are still being criticized for not providing quality education. Even with the great number of innovations and programs for educational improvement and reform, there have in fact been few changes in student performance as measured by test scores, absenteeism rates, and dropout rates. Rogers (1977) cited as an example a study of dropout rates in the New York City public schools conducted by Queens Lay Advocacy Services (now Advocates for Children): the dropout rate increased steadily "from 34% of all entering 9th graders who failed to graduate four years later in 1956-6 to 48.7% for the 1974-5 graduating class" [p.233]

The school system has also been faulted for its lack of "fairness" in providing education to all children. This criticism is reflected in the efforts of various minority groups to obtain fair treatment of minority children, such as Blacks and Puerto Ricans, as well as in the court cases that dramatize instances of discrimination in educational

services, such as the "Mark Twain"⁴ school integration case.

The problems of educational quality and fairness in the New York City schools reflect a citywide historical problem. As Ravitch (1974) summarized, "The history of the public schools in New York City is inextricably related to the city's social and political history. Each major controversy was resolved politically, but resolution has not been solution. Every important issue remains and recurs" (p.401). The context of present issues in the City schools thus includes their history.

In addition to a concern for quality education and for fair provision of educational services in the New York City schools, there has been a concern for community prerogatives in determining the education to be provided for the children. Ravitch (1974) noted that the "public school operates on behalf of the community, but how 'community' is defined is the source of political and ideological controversy" (p.402). The relationship between the school bureaucracy and its various community constituencies has always been couched in this controversy. The decision-making process at the Board of Education includes a sensitivity to "community feelings."

This "sensitivity" was finally defined at the formal level of organization, when, in the late 1960's, the school system was the target of teacher strikes, community anger, and demands for a decentralized system. As Ravitch (1974) noted:

I began to see a pattern, to realize that each major reorganization of the school system was the result of intense political struggle, and that each of these battles coincided with a huge wave of new immigration. Though the issues in each instance were different, the public school was the battleground where the aspirations of the newcomers and the fears of the native population met and clashed [p.xiii]

⁴ Hart v. Community School Board #21 512 F 2d 37 (1978).
(Mark Twain is the name of the school involved in the suit.)

Centralization represented business efficiency, the removal of political influence, and the application of educational expertise to decision-making systems. But the heterogeneous mix of the system's many ethnic groups and interests could not support a centralized decision-making mechanism that decided for all communities and all children the type of education they would receive and who would teach it. This tense situation was somewhat eased in 1969, when the present school system organizational plan of 32 decentralized community school districts, for the elementary and junior high schools, and a centralized high school and special services system, was created. All of these systems are supervised by the central administration, through representatives of the Board of Education.

This compromise was a fragile one, however, and the controversy continued. The teacher lay-offs that occurred in the mid-1970's rekindled the flames in some local districts. The concerns in these districts were translated into protests over the loss of minority teachers in particular communities and the feeling that minority students and teachers were again the victims of discriminatory practices by the New York City schools.

The system is very closely tied to its consumers and its constituents.

Plans for changes in the public school system, and the implementation of such plans, are affected by the actions and attitudes of many "constituencies" ranging from professional groups inside the school system to community groups, real estate interests, and politicians. The Board of Education and the superintendent act within what students of administration call "zones of acceptance" or "conceptions of legitimacy." If the board is to implement new plans, it must mobilize support within the school system and in the community (Rogers, 1968, p. 5).

A final major criticism of the Board of Education has been its

management practices. This has historically been a problem:

Attacks on the schools, as in the past, were aimed at the system of governance. In the 1890s, the reformers said, "If the experts ran the system instead of petty ward politicians, then the problems could be solved." In the 1960s, the reformers said, "If the people controlled the schools instead of the bureaucrats, then the problems could be solved." In both instances, the schools were an easy target. In the 1890s, the reformers could point to blatant examples of inefficiency and arbitrariness under the ward system. In the 1960s, the reformers could justly complain of the inefficiency and cumbersomeness of the system's massive central bureaucracy [Ravitch, 1974, p.400/

As the school system has grown larger and education has become an increasingly sophisticated enterprise, so have the problems of school management been complicated. Rogers (1977) enumerated several of the problems that currently beset the New York City school system, both as a result of its own internal dynamics and as a result of other New York City problems:

- severe fiscal cuts in New York City were felt dramatically in the school system;
- management of a decentralized school system was complicated by unclear guidelines;
- the system needed an effective service center and technical assistance center operated out of the Board of Education;
- there was an uneven mix of talent in the administration;
- funding from state and federal sources was complicated, each with its own guidelines for management; and
- the schools had complicated legal and financial relations with the City government [p. 233].

The management system has also been the target for reform in terms of employment. The issue of equality in hiring practices was central to the concerns of interest groups and of OCR in its investigation. This was not a new problem,⁵ however, as illustrated by the recently resolved

⁵ See Selection of Teachers and Supervisors in the Urban System, a transcript of the public hearings held before the New York City Commission of Human Rights, January 25-29, 1971 (1972). The Fleischman Commission, in 1972, recommended the dissolution of the Board of Examiners, criticizing them as being dysfunctional.

Chance⁶ case and the pending Rubinos⁷ case. In 1972, the NAACP and the NAACP Legal Defense and Educational Fund, Inc. (the Inc. Fund) filed suit against the New York City Board of Examiners --Chance v. Board of Examiners. This suit was an attempt to tie test validation and business-relevancy issues to the selection and promotion of administrators in the New York City schools. In 1974, the New York Civil Liberties Union (NYCLU) and the Public Education Association (PEA) filed another suit against the Board of Examiners--Rubinos v. Board of Examiners. The issue in this latter case was discrimination in teacher selection. In both cases, the selection systems of the Board of Examiners were sharply criticized for their antiquated methods and for their discriminatory impact on minority groups.

The Board of Education not only did not support the Board of Examiners in these suits but worked actively to change the policies of the Board of Examiners as defined by the State education law. These lobbying efforts, however, were opposed by the United Federation of Teachers (UFT), the teachers' union, which saw the Board of Examiners as a mechanism for standardizing and centralizing the teacher hiring process and for supporting the merit and fitness principles it held as an accountability requirement.

The Board of Education comprises several smaller organizations that have specific responsibilities. Four of these subunits played a direct

⁶Chance v. Board of Examiners 330 F. Supp. 203, 3 FEP Cases 672 (S.D.N.Y. 1971), Aff'd 458 F. 2d 1167m 4FEP Cases 596 (2nd, Cir. 1972)

⁷74 Cir. 240.

role in the OCR Review of the New York City schools: the seven-member Board, the Deputy Chancellor's Office, the Board of Examiners, and the Office of Educational Statistics. The Chancellor and his staff were also directly involved in the Review. (An organizational chart of the Board of Education is presented in Figure 2.)

There are seven members of the Central Board of Education. Five members are appointed by the five borough presidents, one from each borough. The other two members are appointed by the mayor. The Board at the time of the OCR complaint was scheduled to serve through June 30, 1978.

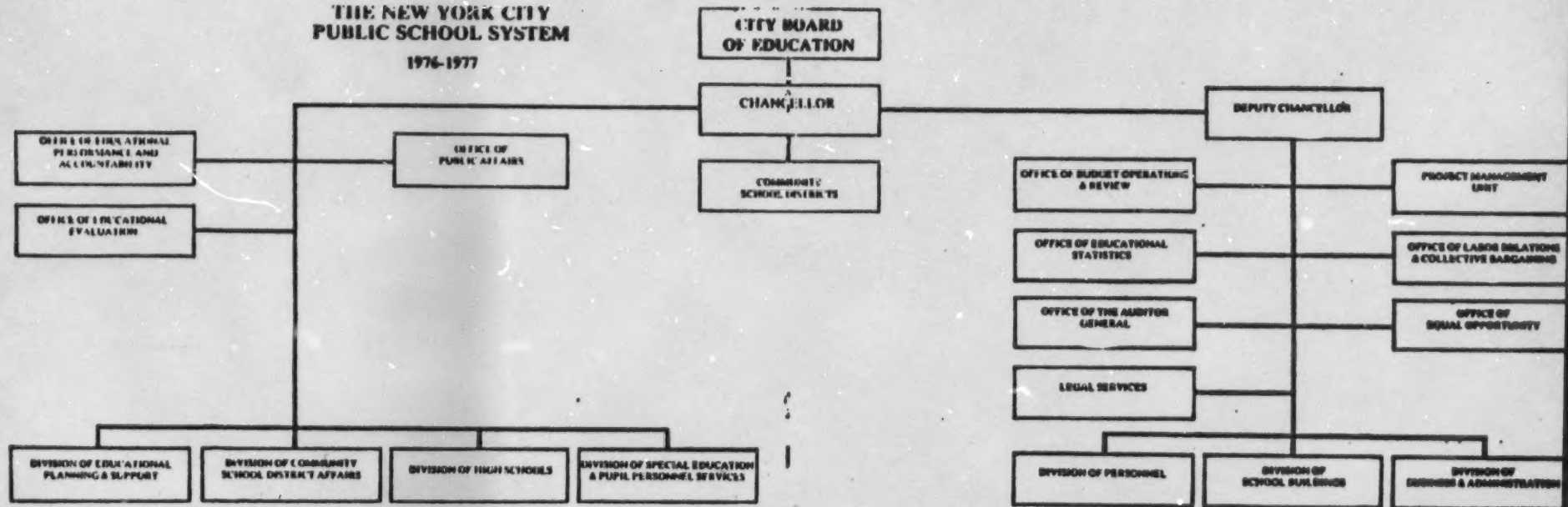
The Central Board shares the operation and control of the City's schools with 32 Community School Boards. The Central Board has jurisdiction over the City's high schools, special schools and classes, and certain citywide operations and policies.

In 1975-76, the overall budget of the Board of Education was over \$2.8 billion: \$2.57 billion was administered directly by the Board; 238 million was administered by other agencies.

The Office of the Chancellor was created in November 1973 as part of the headquarters reorganization that was initiated by the Education Development Council, a large non-profit private corporation with membership from various large corporations that provide that provides technical assistance to the New York City schools. The Deputy Chancellor's Office is supported through tax-levy funds, and was created to improve the policy management and analysis capability of the Board of Education and the school system. This office includes three units--Policy Development, which does budget and legal analyses, and examines major issues related to personnel and employment; Project Management, which

Figure 2

THE NEW YORK CITY
PUBLIC SCHOOL SYSTEM
1976-1977



*Source: Facts and Figures 1975-6 Board of Education, City of New York

assists the Deputy Chancellor in internal management and consulting problems on such projects as school lunch and special education; and a district management consulting team, which provides consulting services to the community school districts and oversees and upgrades the business staffs of the community districts. The Deputy Chancellor's office publishes occasional policy analysis papers on topics of interest to the Board of Education.

The Board of Examiners was established by State law in 1898 as a result of the efforts of New York City School Superintendent Maxwell and various civic groups, who believed that teachers and principals should be selected on the basis of merit and fitness, rather than through influence and patronage. The Board's duty is to test by objective examinations all individuals who are required to be licensed for service in the public schools. Such individuals include principals, assistant principals, department heads, teachers, social workers, psychologists, school secretaries, psychiatrists, etc. The Board and its staff are appointed members of the New York City school system; they are responsible to the Chancellor. The Board is independent, however, in deciding which tests will be used for an examination and in matters directly related to the preservation of the merit systems.

The Office of Educational Statistics is responsible for the collection, processing, and dissemination of all school-based educational data, not involving testing, in the New York City schools. This office has three areas of responsibility:

1. field data collection--the collection of all data gathered by the schools;
2. management information--the development of an educational data base with a capacity for storage and retrieval, and the dissemination of statistical information; and

3. demographic analysis—the development of a computerized data base for generating demographic projections.

The Office of Educational Statistics produces School Profiles, an annual comprehensive summary of data by school and by district. The Office worked closely with OCR during the data-collection phase of the Review.

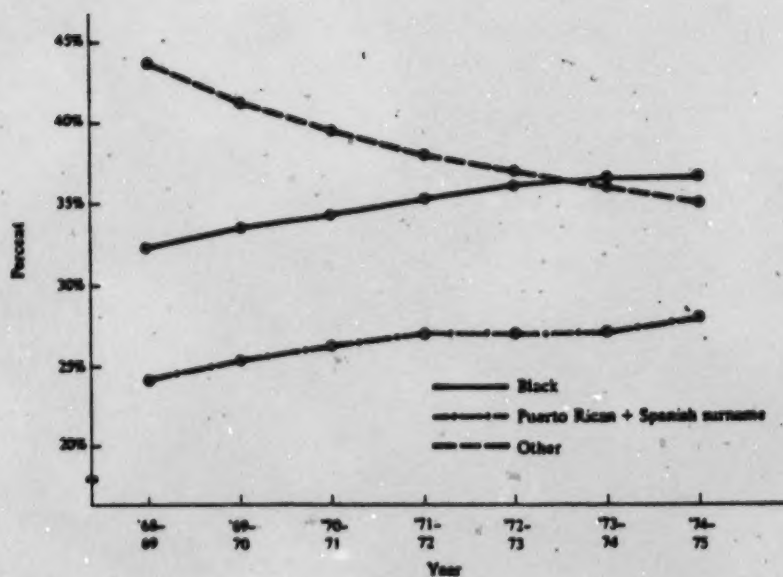
The New York City school system serves over 1,000,000 students and manages a teaching staff of 49,470 and a support staff (principals, assistant principals, and counselors) of 4,465. The student body is 37.3% black, 0.1% American Indian, 2.2% Oriental, 23.3% Puerto Rican, 4.9% other Spanish, and 32.1% "other."⁸ The teaching staff is 9.1% black, 0.0% American Indian, 0.5% Oriental, 3.6% Puerto Rican, and 86.8% "other."⁹ These figures do not portray the wide variety of ethnic and racial groups in the schools, nor do they represent a stable distribution of racial/ethnic groups. The composition of the student body has been changing for many years.

Figure illustrates the decline in the proportion of white students enrolled in the New York City schools from 1968 to 1975, and the corresponding increase in black and hispanic enrollment. Tables 1 and 2 show the ethnic/racial composition of both the student body and the teaching staff from 1968 to 1975. One fact stands out in these figures: although minority students constituted two-thirds of the students in the City schools in 1975, minority teachers constituted only 13.2% of the teaching staff. Table 3 shows the changing ethnic/racial composition of a single high school from 1971-72 to 1975-76.

⁸ These figures are taken from 1975-6 School Profiles, Board of Education, City of New York, February 1977.

⁹ These figures are taken from Appendix A Letter #1-OCR Letter to NYC Board of Education, November 1976.

Figure 3: Ethnic Composition of N.Y.C. Public School Enrollment, 1968-1975



Source: Lash and Sigal, 1977.

Table 1

Ethnic/Racial Composition of the
New York City Schools, 1968-1975^a

	Total		Black		Spanish Born/Named		Oriental		Native American		Total Minority		Other	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Teachers														
1968-69 ^b	51,832		4,879	7.9%	464	0.9%	137	0.3%	46	0.1%	4,726	9.1%	47,106	90.9%
1970-71	51,831		4,455	7.5%	798	1.4%	209	0.4%	18	0.0%	5,462	9.3%	53,355	90.7%
1971-72	54,889		4,426	8.1%	1,027	1.9%	214	0.4%	13	0.0%	5,680	10.3%	49,209	89.7%
1972-73	55,924		4,618	8.5%	1,154	2.1%	217	0.4%	12	0.0%	5,993	11.1%	47,931	86.9%
1973-74	54,726		4,746	8.7%	1,376	2.5%	288	0.5%	8	0.0%	6,418	11.7%	48,308	88.3%
1974-75	53,907		5,038	9.3%	1,688	3.1%	295	0.5%	10	0.0%	7,031	13.0%	46,876	87.0%
1975-76	46,539		4,231	9.1%	1,678	3.6%	233	0.5%	8	0.0%	6,156	13.2%	40,383	86.8%
Students														
1968-69 ^b	1,063,587		334,641	31.5%	244,302	23.0%	15,753	1.5%	1,526	0.1%	596,222	56.1%	467,365	43.9%
1970-71 ^b	1,148,359		393,516	34.5%	292,664	25.7%	17,115	1.5%	687	0.1%	703,902	61.7%	436,457	38.3%
1971-72	1,137,767		397,287	34.9%	301,388	26.5%	18,267	1.6%	388	0.0%	717,242	63.0%	420,525	37.0%
1972-73	1,113,681		399,884	35.9%	293,745	26.4%	20,146	1.8%	415	0.0%	714,110	64.1%	399,571	35.9%
1973-74	1,096,702		400,818	36.5%	296,589	27.0%	22,821	2.0%	613	0.1%	719,233	65.6%	377,469	34.4%
1974-75	1,094,689		398,572	36.4%	302,552	27.6%	23,888	2.1%	585	0.1%	724,797	66.2%	369,892	33.8%
1975-76	1,085,558		401,652	37.0%	308,551	28.4%	24,231	2.2%	727	0.1%	735,161	67.7%	350,397	32.3%

^a All data from SEDS School Survey unless otherwise noted.^b Data from OCR Survey (101-102's)

Source: OCR Letter One, November 9, 1976, to The Board of Education of the City of New York.

Table 2

RACIAL/ETHNIC COMPOSITION OF STUDENTS AND TEACHERS BY SCHOOL LEVEL
1975-76

	American Indian		Black		Oriental		Spanish Surnamed		Other		Total		Minority		Non-Minority	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Elementary Schools																
Students	301	0.1	198,150	36.8	12,481	2.3	164,756	30.6	163,332	30.3	539,020	100.0	375,688	69.7	163,332	30.3
Full-time Teachers	2	0.0	2,013	9.3	91	0.4	975	4.5	18,464	85.7	21,545	100.0	3,081	14.3	18,464	85.7
Junior High/Intermediate Schools																
Students	155	0.1	89,894	38.9	5,005	2.2	67,114	29.0	69,023	29.9	231,191	100.0	162,168	70.1	69,023	29.9
Full-time Teachers	2	0.0	1,516	12.9	62	0.5	387	3.3	9,814	83.3	11,781	100.0	1,967	16.7	9,814	83.3
High Schools																
Students	271	0.1	113,608	36.0	6,745	2.1	76,681	24.3	118,034	37.4	315,339	100.0	197,305	62.6	118,034	37.4
Full-time Teachers	4	0.0	702	5.3	80	0.6	316	2.4	12,111	91.7	13,213	100.0	1,102	8.3	12,111	91.7

Source: BEDS, 1975-76; information does not include special schools.

Table 3

**ETHNIC/RACIAL COMPOSITION OF A NEW YORK CITY HIGH SCHOOL
1975-76**

Year	Total	Black		Oriental		Spanish Surnamed		Other	
		N	%	N	%	N	%	N	%
<u>Students</u>									
1971/2	4,630	1,161	25.1	714	15.4	1,810	39.1	945	20.4
1972/3	5,075	1,268	25.3	785	15.5	2,056	40.5	948	18.7
1973/4	4,953	1,274	25.7	863	17.4	1,913	38.6	902	18.2
1974/5	4,211	894	21.2	798	19.0	1,910	45.4	606	14.4
1975/6	4,159	797	19.2	868	20.9	2,080	50.0	414	10.0
<u>Teachers</u>									
1971/2	234	5	2.1	8	3.4	13	5.6	203	88.9
1972/3	231	5	2.6	10	4.3	10	4.3	205	88.7
1973/4	209	6	2.9	9	4.3	10	4.8	184	88.0
1974/5	180	4	2.2	9	5.0	10	5.6	157	87.2
1975/6	156	6	3.8	7	4.5	8	5.1	135	86.5

When OCR filed its complaints against the New York City schools, the City was in the midst of a severe fiscal crisis. This crisis had evolved over a period of several years as the City borrowed money to cover its current deficits, which it had done every year since 1960-1961 (see Gramlich, 1977). By April 1975, the financial community was no longer willing to purchase the City's securities. The ensuing budget crisis necessitated both State and Federal intervention to prevent the City from defaulting on its obligations (GAO, 1977).

Several municipal problems contributed to this crisis. One was the power of the public employee unions in New York City. These unions had won major concessions from the City over the bargaining table, and they also controlled a vast number of city votes. Contributions to the public employee pension funds were enormous. A second "problem" leading to the crisis was the ambitious program of social welfare undertaken by the City on its own during the 1960s, including welfare aid, free public higher education, public hospitals, and public housing. The City transit system also had a growing deficit.

In June 1975, the Municipal Assistance Corporation for the City of New York (MAC) was formed by action of the New York State legislature. MAC's purpose was to assist the City in providing "essential services to (the City's) inhabitants without interruption and (to create) investor confidence in the soundness of the obligations to the city" (SEC, 1977, p.258). MAC was authorized to borrow up to three billion dollars and was initially supported by revenue derived from sales taxes and from stock transfer taxes due the City. In September 1975, the Emergency Financial Control Board (EFCB) was established by the State to provide a new mechanism for budget review and accountability and to oversee administration of the City's finances. Its membership included City and State officials and representatives from the private sector.

A 1977 report to the Congress by the General Accounting Office (GAO, 1977) assessed the City's long-term fiscal and economic prospects. This report concluded that:

- The rapid deterioration in the City's fiscal and economic base is the root of the City's problems.
- The City will continue to find it difficult to cut expenditures.
- Unless there are major State and Federal policy shifts, 1977-85 will be an extremely difficult period for the City, one that could be aggravated by national recession or inflation.
- Declaring bankruptcy will not solve the City's problems.

The Board of Education was affected by the fiscal crisis. The schools are dependent upon the City's taxes for support; no taxes are raised specifically for education in New York City. The Board was forced to undertake severe staff cuts. In 1975, there were almost 53,000 teachers in the system; by June 1976 this number had been reduced to 47,300 (GAO, 1977), and there were plans to reduce the teaching staff even further, to under 45,000.

These dramatic staff cuts led to several concerns. Many people wondered whether the cuts would have a disproportional effect on minority employment and whether the cutbacks would lead to further deterioration of the educational program and thus drive the middle class out of the public schools. Many now looked to the Federal and State governments to provide aid to the schools. New York City was receiving only 29% of its education budget from the State, compared to 40% for other districts in the State. Additionally, the City had lost Federal funding, which dropped from \$295 million to \$258 million.

The Board of Education did not cooperate fully with the City in the City's attempts to cut the education budget. A bill was introduced in the

State legislature to limit cuts in the Board's budget; this bill was defeated, however.

The fiscal crisis had both short-term and long-term effects on the City's schools. Many of those staff members who were laid off (the short-term effect) were reluctant to return to the Board two years later when the Board was hiring new staff (the long-term effect). This phenomenon will be discussed more fully below in the case study.

LIST OF ACTORS

The following case study involves many agencies and their personnel, interest group representatives, and highly visible agency directors. The names of some of these individuals have been changed to protect them. The directors of agencies, such as OCR or the Board of Education, were public figures and highly visible; their names were not changed. This rule was not followed in the cases where names of individuals were referred to by documents but the individuals were not interviewed, their correct names were included. Below are listed the "Actors" by each agency; all pseudonyms are starred (*).

Department of Health, Education and Welfare

Secretary

Elliott Richardson (1972-1973)

Casper W. Weinberg (1973-1976)

David Mathews (1976-1977)

Joseph Califano (1977-to present)

Office for Civil Rights

Director

J. Stanley Pottinger (1972-1973)

Peter E. Holms (1973-1976)

Martin Gerry (acting 1977)

Al Hamlin (acting 1977)

David Tatel (1977 to present)

Deputy Director

Patrick A. King (1973-1974)

Martin H. Gerry (1974-1977)

Barbara Walker (acting 1977-1978)

Associate Director

Cynthia ("Cindy") Brown (1977 to present)

Norman Chachkin (1977)

Review Staff

Ted Johnson, Team Leader

John Wodatch

*Karen McKenzie

*Amy Lewis

Chicago Team (1977) Team of equal educational opportunity specialists from the Chicago Regional Office. (OCR)

Region II

Region Director Joel Barkin

Branch Chief Wilda Koenig

Consults to Office for Civil Rights

Delta Research Corporation

LAMDA Corp.

Boone, Young and Associates, and Georgia McMurray

Nick Flannery (civil rights lawyer)

*Greg Jones (from Children's Defense Fund)

Bilingual General Assistance Center, Columbia University

U.S. Commission on Civil Rights

Director

Theodore Hesburgh, Rev.

Board of Education

Chancellor

Harvey Scribner (1970-1973)

Irving Anker (1973-1978)

Frank Macchiarola (1978 to present)

Deputy Chancellor

Bernard Gifford (1976-1977)

Ron Walters (1977-1978)

Staff of Deputy Chancellor

Office of Educational Statistics

Director	Frank Arricale
Staff Member	Daisy Hicks
Special Assistant to the Chancellor	Charles Shonhaut

Legal Department	Michael Rosen
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Assistant Superintendent for the Community School Districts	Alfredo Mathews
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Office of Educational Evaluation	Anthony Polemini
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Board of Examiners

Chairperson	Ethel Fitzgerald
District 13	Jerome Harris, Superintendent
District 26	William Caulfield, Chairperson, Board of Education

Interest Groups

Advocates for Children

Director	Marion Thompson
Staff Member	*Nancy Cornell

American Civil Liberties Union	Richard Larson, Lawyer
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American Jewish Congress

ASPIRA

Council of Supervisors and
AdministratorsLeadership of Supervisors
and Administrators

Leadership Conference on Civil Rights

NAACP - Legal Defense and Education Fund	James Meyerson, Lawyer
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New York Civil Liberties Union

Puerto Rican Legal and Education Association

Wednesday Club

Williamsburg Legal Services Art Eisenberg, Lawyer

Justice Department / Eastern Division

Judge Jack Weinstein

Assistant U.S. Attorney Richard Caro

Politicians

William Buckley (R-NY) (1970-1977)

Jacob Javits (R-NY) (1959 to present)

Patrick Moynihan (D-NY) (1977 to present).

Leonard Stavisky (State Senator, NY)

Chapter 5

ORIGINS OF THE NEW YORK REVIEW

In the summer of 1971, the U.S. Commission on Civil Rights conducted a study of the Puerto Rican population of New York City¹, with particular attention to the public schools; this study found discriminatory practices toward Puerto Rican children in the public school system. Father Theodore Hesberg, then Chairman of the Commission, sent a letter to Elliott Richardson, Secretary of the Department of Health, Education, and Welfare, requesting that the Office for Civil Rights investigate this issue. Senator Jacob Javits (R-New York) made a further request: that OCR look into the problem of educational services for all students in New York City, not just the Puerto Rican students.

At this time, there was also discussion within OCR about what direction the agency should take. OCR had just finished an investigation of the Boston public schools; these internal discussions thus turned toward a consideration of the New York City public schools. In the summer of 1972, Martin Gerry², Assistant Director of OCR, persuaded Stanley Pottinger, the Director, to begin an investigation of the New York City schools. This decision followed several months of discussion between Pottinger and several of Gerry's assistants, including Amy Lewis*, who was to stay with the project until its end. The next step was to determine how long the investigation would take and what level of personnel

¹Puerto Rican and the Promise Land U.S. Commission on Civil Rights, 1972. In addition there were hearings in New York City on Puerto Ricans (1972), conducted by the U.S. Commission on Civil Rights.

²Gerry, a Republican lawyer from New York City, had just completed an investigation of the Boston Public schools.

commitment would be required. Finally, a memo was sent to Secretary Richardson from Pottinger, Gerry, and Lloyd Henderson, head of elementary and secondary education in OCR, proposing the investigation. Gerry later explained that the Secretary's approval was necessary since the investigation was so large an undertaking and it had many political implications. The Secretary approved the investigation, in part because the investigation of Boston's school had recently been successfully completed.

On July 18, 1972, a letter was sent by Pottinger to Harvey Scribner, Chancellor of the New York City schools, stating that a review was being initiated. The letter noted that OCR had received several complaints of civil rights violations in the schools.³ Pottinger held a press conference to announce the investigation and to describe the basis for beginning the review. Members of the New York City Board of Education, OCR staff, and representatives of various civil rights groups were also present

³ OCR staff members described these complaints as being of three types: (1) broad complaints that allege system discrimination against a particular class of clients protected by OCR, but do not identify individual students or schools; (2) allegations of specific types of discrimination in which particular classes of students are identified and, in most cases, either a particular community school district or a particular school is identified, but not particular individuals; and (3) complaints made by an individual person, perhaps a parent, that identify specific students or one particular student and outline very specific types of alleged discrimination. Because of confidentiality requirements, it is not possible to identify the nature or source of particular complaints. (This information is taken from testimony in the U.S. Court of Appeals, Second Circuit, Docket No. 76-6096.)

at the press conference.

During 1972, a small staff (five or six people) was assigned to Martin Gerry (in addition to his regular staff of two) to examine the issues involved in starting the investigation. Gerry was in charge of program development at OCR; he took on this project in part because OCR had never conducted a comprehensive review of an urban school system before. OCR's initial task, then, was to develop a plan to conduct the investigation. Gerry and his staff realized they needed extensive preparation before beginning the actual investigation.

During the initial preparation, Gerry and his staff group worked with Alfredo Mathews, the Region II OCR Director (New York City is in Region II). Mathews left OCR shortly thereafter to return to the New York City Board of Education as liaison to the community school districts. During the course of the investigation, the Region II OCR office had several directors and project directors.⁴

⁴ After Mathews left the Regional Office, William Valentine was Acting Director for a while. Joel Barkan became Director in 1973, transferring from OEO. Valentine became Director in 1976. Wesley Horn was Project Director and Branch Chief for Elementary and Secondary Education. He was later replaced by Tom Collins, who in turn was replaced by Nilda Koenig, who remained Project Director through the remainder of the period of this study.

Gerry later complained that there were internal problems in the Regional Office at the start of the investigation. During this early period, the Review Staff⁵ in Washington worked with only five or six people in the Regional Office; this later grew to about twenty people. As data were being collected and analyzed, the Regional Office staff was expanded even more.

Soon after the review was begun, OCR let a contract to develop a conceptual design for an information system to accompany the review.⁶ This system was intended to enable the Review Staff to keep track of the data; it associated the various pieces of data with the particular issues in the study. A 150-page summary was later developed that included all the issues and questions the Review Staff had hypothesized for investigation.

During this first year of the investigation, the OCR staff worked to determine exactly what they wanted to collect and what issues they wanted to investigate. For instance, to investigate racial segregation in ability grouping, they had to define specifically the kinds of classes to include in the study, the age

⁵"Review Staff" refers to OCR staff who worked directly on the review of the New York City schools.

⁶The first contract for the data collection design went to the LAMDA Corporation. A second contract, described as the implementation contract, was later let to the Delta Research Corporation. Both companies had bid on this second contract. At this time, some staff from LAMDA went to Delta.

groups to include, and additional data beyond racial composition they would need for these classes, such as the instructional purpose of the class and the method of funding. The Review Staff realized early in the investigation that the issues could become complicated by arguments about the educational value of classes that appeared to be segregated.

Historically, OCR conducted its investigations by simply collecting general data on the racial composition of classes. For the New York City review, however, the Review Staff knew they would need a great deal of additional substantive information. (For instance, in the case of classroom segregation, are the students segregated for purposes of innovative teaching or bilingual instruction?) For the first time, then, OCR staff began to examine the legal theory underlying civil rights issues and the circumstances associated with discriminatory practices. The law, however, is not clear on such issues as the racial segregation of classes. The Review Staff therefore moved carefully on developing these issues; they were concerned that whatever case they ultimately developed would hold up in court.

The Review Staff knew from the beginning that they were going to have problems collecting data. Although Chancellor Scribner was very open to the investigation, Albert Shanker, President of the United Federation of Teachers (the teachers' union), let the Review Staff and OCR know he did not welcome the investigation. Shortly after the beginning of the investigation, Scribner was replaced as Chancellor by Irving Anker, who was initially appointed Acting Chancellor. Scribner remained concerned about the investigation, however,

and contacted OCR to offer his assistance. Scribner's particular concern was the issue of comparability in the allocation of resources. This basic question of whether state and local monies were being evenly distributed to minority children was ultimately dropped from the investigation, however.

Data Collection: Source Identification

During the late spring and early summer of 1973, OCR began to identify data sources for the investigation. This required, first, the identification of the problems to be investigated, and, second, the identification of data available for analyzing discrimination without collecting new data. New staff were brought in at this point, including Karen McKenzie (pseudonym), who was to stay with the investigation through the issuance of the letters of violation.

The Review Staff began by talking with staff at the U.S. Commission on Civil Rights. Their study of the Puerto Ricans in New York City served as a major source of direction for the investigation because of the types of information it included and its indicators of what else needed to be examined. This report contained valuable statistics on education in New York City as well as court testimony.

Most of the data sources that were identified were in the New York State Department of Education, the Board of Education of the City of New York, the New York City Health Department, and various federal agencies. The Review Staff met with staff from the Board of Education and from the State Department of Education to obtain these data. The Board of Education designated Anthony Polmeni,

from the Office of Educational Evaluation (which had responsibility for all testing information, as liaison to the Review Staff. (Later, however, the Review Staff became so familiar with Board of Education personnel that they no longer worked through Polmeni.) The Review Staff also went to schools to examine records as another means of identifying potential data sources.

OCR staff also met with several interest groups in New York City during 1973 and 1974 to identify the issues, to learn about the New York City school system, and to build up a constituency base for the investigation. The Public Education Association (PEA) played a major role in this effort, both by convening several interest groups at different times to meet with OCR to discuss the issues, and by serving as a resource during the investigation. PEA's director, David Seeley, recalls being wary about the ability of the Nixon administration to push for civil rights, but he believed that Gerry would do it. Moreover, he was pleased to see that Gerry was attempting to develop a constituency of parents and agencies early in the investigation. He therefore committed PEA to help pull together these groups for OCR to consult periodically.

This arrangement never worked. The Review Staff would "disappear" for months at a time, and it would seem to these agencies that nothing was being done. The Review Staff contacted PEA and other agencies or individuals only sporadically. Through their own efforts, however, these agencies remained actively involved in the investigation, primarily with the issues but also with OCR itself.

In May 1973, a major meeting was held at PEA. OCR regional staff members, the OCR core team from Washington, D.C., representatives

of Delta Research Corporation, and representatives of Boone, Young and Associates were present. Several advocacy agencies were also represented: the Director and Mary Williams (pseudonym) from Advocates for Children (AFC), Mike Rebell from the Lawyers Committee for Civil Rights Under Law, a lawyer from PEA, and other staff members from PEA. This first meeting was intended to examine the issue of comparability of services. Seeley requested that they also look at the issue of unequal salaries. OCR had come to this group to ask for ideas and to develop a constituency of groups to help promote compliance.

Establishing a Plan for Data Collection

A comprehensive data base was therefore developed for civil rights data collection. In February 1974, this design was expanded for use in later reviews of three other big cities: Philadelphia, Chicago, and Los Angeles. This total investigation effort became known as the "Big Cities Review"; New York City was the test case. Gerry was Acting Director of OCR while Peter Holms, the Director, was in the hospital.

The Supreme Court handed down its decision in Lau v. Nichols,⁷ which dealt with bilingual education, in February 1974. OCR administrators met to discuss what this decision meant for the agency. Gerry then met with HEW Undersecretary Carlucci, who requested that OCR develop a plan for dealing with in-school discrimination. The OCR staff developed a two-pronged approach. The first part of this plan originally was intended to include five major cities. Houston was eliminated from consideration because the Dallas Regional

⁷414 U.S. 563 (1974)

Office had too heavy a work load to take on such an investigation. The remaining four cities, Chicago, Philadelphia, New York, and Los Angeles, were selected because their schools enrolled a large percentage of non-English-speaking children and would thus serve as "opinion leaders" for other school districts, and because they were the largest cities and the largest school systems in their respective states. The second part of the plan was to review 335 smaller districts concurrently with the Big Cities Review. Letters were sent out to all school districts around the country in which non-English-speaking students constituted more than 10% of total student enrollment; this became known as the Lau enforcement program. The Big Cities Review was also designated to examine educational services for all rather than patterns of segregation; it was modeled after the New York City Review.

The issues that structured data collection for the New York City Review were generally civil rights issues that emerged from current court cases, such as the Lau case; OCR policies, such as those on discipline or ability grouping; and issues that arose from various investigations OCR had done in the past. The Review Staff developed a list of about 20 allegations that served as hypotheses for investigation; these allegations could be tested with the data collected. Their primary purpose was to develop a data base on which to conduct analyses that would be admissible to court.

The final data collection plan also required the development of a comprehensive management information system organized around the issues, and of statistical analyses to be performed for each

type of data to be collected. This was done by a subcontract, let by Delta Research Corporation, to Boone, Young and Associates, a New York based minority consulting firm. In the fall of 1974, Boone Young hired Georgia McMurray⁸ as a consultant to work with OCR. Boone Young developed and implemented a data retrieval system for OCR. Earlier, this firm had helped OCR to identify data bases in New York City. LAMDA Corporation submitted the final data collection plan to OCR. This plan served as a basis for the investigation and for analysis of the data.

The Plan

In May 1974, OCR formally announced its plans to investigate the New York City schools. At this time, the review was still focused on children's educational rights. Officially, this review was planned to take three years of investigating, and represented OCR's shift from small studies of southern school desegregation to the Big City Review. The New York City Review was to be the most comprehensive review ever undertaken by OCR. OCR also announced that Chicago, Philadelphia, and Los Angeles would be reviewed. These four school systems included a large percentage of the minority children and non-English-speaking children in the United States: 15.4% of all the black children, 21.9% of the Spanish-American children, 20.8% of the Asian children, and a large percentage of children from other ethnic backgrounds. In New York

⁸Georgia McMurray was the Commissioner of the Agency for Child Development in New York City during the Lindsay Administration.

City, OCR planned to analyze educational services for black, hispanic, and Asian students, as well as students from Haitian, Dominican, Italian, Greek, and Eastern European backgrounds.⁹

OCR identified four areas for analysis:

1. Whether there was comparability between racially or ethnically identifiable schools or districts vis-a-vis instructional expenditures, facilities, and other services.
2. Whether educational services being provided to children placed them in educational and cultural environments that did not meet their linguistic needs, or included the use of curricular materials that dictated a permanent, lower level of educational achievement, regardless of academic potential, as a result of their race, color, or national origin (including language system or migrant status),¹⁰ handicap, or sex.
3. Whether the effect of assigning children to ability groups or tracks, special educational programs, or programs for gifted children was to create and maintain educationally isolating environments within the schools so as to place children at a disadvantage because of their language or cultural background, sex, or handicap.
4. Whether children were treated differentially on the basis of their race, color, national origin, or sex in the conduct of school-sponsored, extra-curricular activities,

⁹ May 24, 1974 Region II, OCR report, "Review of the New York City Public Schools."

¹⁰ A new area of responsibility for OCR, the protection of handicapped persons civil rights, is based on section 504 of the Rehabilitation Act of 1973. The regulations were not signed until 1978. Districts, therefore, could not be held accountable for discrimination in that area until the regulations were made available stipulating what could not be done.

counseling, or disciplinary procedures, and whether day care and Head Start programs were free of discrimination.

The report OCR released at this time described the Big Cities Review as the most important national effort undertaken by OCR in elementary and secondary education, and noted that substantial resources were committed to the project.

Inclusion of Advocacy Agencies in New York City Review

OCR staff met again with the advocacy agencies in November 1974. OCR regional staff and Washington staff were there, as well as consultants from Delta Research Corporation and representatives of PEA and of Advocates for Children. This group discussed the investigation that was to take place during the school year and agreed that the high school study would begin with visits in January 1975, after the design of the data bases was completed. There were four areas for analysis: comparability, access, in-school treatment, and the non-instructional program. The high schools had been chosen by OCR for their appropriateness on the basis of their representation of certain school characteristics. Data would be collected on the following factors:

1. teacher assignment and experience;
2. the language ability characteristics of high school students;
3. number of courses in a language other than English offered by the high schools;
4. schools receiving categorical aid under ESEA Titles I, II, III, VI, VII (Urban Education);
5. instructional expense comparability;

6. per pupil library expenditures in high schools;
7. number of students enrolled in special progress classes by ethnicity and language;
8. attrition between 11th and 12th grades;
9. enrollment in work-study programs;
10. pupil attendance;
11. utilization of buildings;
12. desegregation indices for high school English classes;
13. age and current modification of school buildings;
14. assignment of gymnasiums and swimming pools in high schools;
15. professional staff degree distribution;
16. teacher absenteeism;
17. ethnicity and language background in New York City public schools;
18. participation in classes for the handicapped by ethnicity and language background.¹¹

Part of the meeting was devoted to a discussion of the sources of data that had been identified for the plan. The advocacy groups were informed about what OCR was planning to do in the coming months, and given an opportunity to provide input. Later, however, the data collection was postponed until the next school year.

The OCR staff also sought other assistance in New York City. The staff from Boone, Young helped with the development of questionnaires, providing both expertise in survey design and knowledge about New York City issues and problems. Delta Corporation reviewed the questionnaires to make sure that the data collected would be useful

¹¹This list is a summary of the factors for study discussed as part of the meeting's agenda (November 8, 1974).

for the final data bases. Georgia McMurray, who had earlier met with Martin Gerry and who, like Gerry, was concerned about special education and early childhood education, worked with Boone, Young to develop a series of questionnaires designed to retrieve information on preschool projects from the Board of Education. She was also useful to OCR because of her knowledge of suspension practices and special education in New York City, and because she knew the personalities at the Board of Education and was familiar with the New York City bureaucracy in general. She provided technical help in moving the Review forward through the Board of Education, and in working out the nuts and bolts of everyday problems. She also had insight into the discrepancies between Board of Education policy and what was actually being implemented in the schools.

The OCR questionnaires had been designed to gather as much information as possible.¹² Often, Washington OCR staff would go to New York City to work with the Regional Office staff on the questionnaires, or Regional Office staff would go to Washington. A lawyer from Boone, Young participated in these sessions to ensure that the data collected would be useful in court. A great deal of time was spent drafting and redrafting the questionnaires.

In addition to the Review Staff and the consultants, representatives of advocacy groups were consulted on the construction of instruments. These people, because of their own experience with the Board of Education, directed the OCR staff to the various areas of different levels of program management and operations. Georgia McMurray, in particular, was familiar

¹² The Board of Education complained that the questionnaires were a burden, that too much information was being requested.

with the issues and with the relevant interest groups; she had linkages to many of these groups through her own work.¹³

The Review Staff and their consultants spent six months training the Regional Office staff in the data collection techniques that were going to be used. Georgia McMurray helped to train the staff in interviewing skills. She also worked closely with Martin Gerry, Karen McKenzie*, Amy Lewis* and staff from Delta Research Corporation.¹⁴ Georgia was concerned with several issues herself, especially the continuity of services provided for children who had pre-school experience. This problem was not directly involved with the Civil Rights Act, however, and was later dropped from the Review.

OCR Researchers, New York City

The Review Staff gradually moved their base of operations to New York City. Amy spent about three of four days per week in New York City, over a period of years. She and the rest of the staff spent a great deal of time talking to most of the people who were involved in civil rights in New York City and at the Board of Education, finding out about policies and about data collection. She spent an average of at least one day a week at the Board of Education over the four years of the investigation, spending

¹³ Georgia was vice-president of PEA and had been involved with the now defunct Alliance for Children, as well as in Advocates for Children and the NAACP Legal Defense and Educational Fund, Inc.

¹⁴ This group -- Gerry, Georgia McMurray, Karen McKenzie*, Amy Lewis,* and staff from Delta Research Corporation -- remained involved throughout the review.

time with the data processing people (who later developed a management information system and began producing the School Profiles), with Alfredo Mathews (the liaison with the community school districts), with the departments of curriculum development and guidance counseling services, and with the departments of funding and budget.

OCR staff also met with the Acting Director of the Board's Office of Educational Evaluation and with the Director of the Office of Educational Statistics to discuss, evaluate, and modify the special compliance reports¹⁵ necessary for Federal funding. Whenever possible, changes suggested by the Board officials were made. In March 1975, Martin Gerry sent a letter to Irving Anker to advise him that, as a result of meetings with Anker's staff and of OCR's desire to obtain accurate information, he (Gerry) had decided to delay distribution of the special compliance report until the 1975-76 school year. In anticipation of the special compliance report, the Office of Educational Statistics modified its own instruments to collect some of the required information.

The Central Office of the Board of Education cooperated with the efforts of OCR as evidenced by the special circular #82 1974-75, April 1975. This circular was sent to all community School Boards, Chairman at all levels, and principals, informing them of the 1974 elementary and secondary school civil rights survey, which was a separate report that was required from every school and annex. The circular described how these forms should be filled out and when the forms were due. A project

¹⁵ OS/OCR forms 101/102. Form 101 is to collect information on the district as a whole. Form 102 is a very detailed form, to be completed for a specific building. Questions covered in this reports are to gather information relevant to civil rights compliance.

coordinator for referrals of any questions was named. As a result of this, a portion of the information required on the special compliance reports had already been gathered.

The OCR Review Staff planned to collect data in several ways: through individual interviews at schools, from questionnaires and packets sent to the schools for completion, and through structured interviews of staff members of the Board of Education schools. Baseline data had been collected in 1973-74 and 1974-75, and special data were to be collected in 1975-76.

During 1974-75, OCR selected the 21 high schools and the six community school districts they wanted to study in depth in 1975-76. Data were also collected on all 900 plus schools in the system from the central Board of Education. The six districts chosen for intensive investigation represented a diversity of racial and ethnic groups and a wide range of different programs. A computer program had been used in the selection process. OCR investigators would be going into each of these schools to conduct interviews and to give out self-administering questionnaires to certain teachers. The other districts and schools were to receive the special compliance reports. The in-depth information collected in the six districts would then be related to what was going on in the City as a whole.

During the spring of 1975, OCR tested the instruments for the in-depth interviews instead of collecting the survey data as had been planned. Amy Lewis sought the help of Mary Williams of Advocates for Children, for advice on the instruments. In

June 1975, Cornell sent Lewis information on the "600" schools and on programs for the handicapped. She also included a confidential draft of a committee report that would be of interest to Lewis on lists of guidance personnel for Lewis to talk with about the Review. Cornell later helped Lewis set up appointments with guidance personnel and with a principal. Lewis had wanted to avoid any formal testing of the questionnaires, so Cornell had referred her to a principal who would be sympathetic. He reviewed the principal questionnaires, and told Lewis where to make changes and what to leave out. These changes were incorporated in the final questionnaires that were disseminated.

Advocates for Children had little further contact with OCR until the first letter came out in late 1976. AFC nevertheless found the coordination between the New York and the Washington offices to be virtually nonexistent; it seemed that there was no communication between the two offices. On the other hand, OCR Review Staff, particularly the Director found the advocacy agencies to be well coordinated. The Review Staff acknowledged their awareness of a "network" among the agencies, and made use of this information network.

Washington-based advocacy groups were also involved with the Review, such as the Leadership Conference on Civil Rights and the Children's Defense Fund, and noticed problems with OCR early in the investigation, particularly in the design of the study. This is illustrated by an incident recounted by a staff member from one of these groups. When he was doing consulting work with OCR during

1973-74, a summer intern approached him for technical advice on a proposal to test attitudes toward race, which was to be used as "proof" of the consequences of a tracking system. The intern said that Martin Gerry was pushing for this technique. According to this staff member, such an approach is legally wrong, because it has no connection with a violation of law. Later, this proposal was taken to court and subsequently dropped, because OCR could not say why this technique was important.

Political Pressure

During the Review, OCR ran into political problems. Various politicians tried to stop the review or the data collection activities, and would exert political pressure from time to time. For example, Chancellor Anker appealed to HEW Secretary David Matthews to discontinue the Review, and met with Secretary Casper Weinberg on two or three occasions to try to have the Review stopped. He suggested that the money be spent on New York City rather than investigating the City.

There was also pressure from members of Congress, which Martin Gerry connected to the Board of Education. Senator Javits was not involved until the negotiations between OCR and the Board of Education in 1977. Senator James Buckley, the junior senator from New York, often became involved with data collection problems, in part because of his concerns about privacy and confidentiality. Gerry recalled receiving a couple of letters from Buckley suggesting that OCR stop "harrassing" teachers. Later, when the Review Staff went to court

over various administrators' non-compliance with data collection, Buckley tried to intervene to persuade the judge not to put people in jail. This turned out not to be necessary, however. Meanwhile, OCR was expanding the scope of its investigation of the New York City schools.

Chapter 6
LETTER ONE

The Review of the New York City schools was complicated by the addition of a new focus to the study. Up to this point, the study had been limited to discrimination in the provision of education services. The issues of employment and civil rights violations were not part of the original investigation by OCR. Discrimination in teachers hiring and placement practices did not become part of the study until mid-way through the investigation.

During the fiscal crisis, many public school teachers were laid off (up to 17,500). According to the UFT contract, those teachers with the least seniority were laid off first. Many people, including several of the interest groups, thought this method of lay-offs had a discriminatory effect on minority group staff members because there was a higher percentage of minority teachers among the more recently hired teachers than among the teachers with more seniority. One result of this problem was an administrative complaint entered into by various interest groups. In this case, Cheese et al. v. Board of Education of the City of New York,¹ the plaintiffs were black minority teachers who had been laid off. They argued that this was discriminatory because earlier hiring practices were discriminatory and had not allow them to be hired until more recently. .

As a result of an inability to collect case-relevant data from the Board of Education, the plaintiffs lawyers filed an administrative complaint under Title VI of the Civil Rights Act in February 1975. The lawyers in this complaint some of whom were also involved in the Rubinos case (a case focused on the discriminatory impact of the Board of Examiners' tests),

¹Administrative complaint, Feb. 17, 1976, filed by E. Richard Larson (NYCLU) and Arnold Rothbaum (Williamsburg Legal Services)

hoped that this complaint would help free up data that the Board of Education had resisted producing in the both cases. Any information collected under the OCR investigation could be obtained by the lawyers under the Freedom of Information Act. The Cheese case was used as the source of the complaint, however. The lawyers did not want to involve OCR in the Rubinos case. Early that fall, James Meyerson, an attorney with the NAACP, had filed a separate administrative complaint on behalf of several young black teachers and the Coalition of Concerned Black Educators, an organization that represented many other teachers in a similar situation.

Up until this time no communications had been made by either of lawyers to OCR in reference to discrimination against teachers. Much to their surprise, OCR decided to investigate this complaint. A meeting was held in February in response to their requests. James Myerson notified Carol Ziegler (then of Williamsburg Legal Services) about the meeting, urging her to come and letting her know it was with the Region II Director Joseph Barken. As a result of this meeting, OCR was to set up a seven-person team by mid-March 1976 to look into this matter.

This first meeting was followed by another meeting held in Washington, D.C., by OCR staff (March 15, 1976) to discuss the various New York City complaints. In attendance were lawyers representing the Cheese complaints and a wide variety of advocacy agencies (NAACP, ACLU, Aspira, United Bronx Parents Association, Williamsburg Legal Services, Puerto Rican Legal Defense

²In addition, at this time there was a great deal of concern in the Ocean Hill-Brownsville area over the kinds of teachers the community wanted. There were feelings that there was a lot of mismatch of staff hired and staff available and staff who wanted to work in that area. The area ended up having a lot of per diem teachers assigned there, some who had even done their student teaching in the area. Some of the plaintiffs in the Rubinos case were these teachers. This complaint was filed separately by the NAACP lawyers. At this point PEA had been involved only financially.

the lawyers for OCR from the HEW General Counsel's office, and superintendents and other representatives from some of the community districts in New York City.

According to accounts of the meeting, the participants first discussed the complaints filed with the OCR/HEW by the Coalition of Concerned Black Educators, the New York Association of Black Educators, the ACLU, and Williamsburg Legal Services. They explained OCR's approach to the problem and discussed the information recognized by OCR: (1) the legal cases pending against New York City; (2) the hiring practices and policies of the New York City Board of Education, including the role of the Board of Examiners; (3) certification and licensing; and (4) the data. Second, they discussed the legal approaches to the problem. James Meyerson of the NAACP brought several of his clients (young black teachers), who made a presentation to the OCR staff. Jerome Harris, Superintendent of District 13, and Daisy Hicks of the Board of Education personnel department were also present. Harris was a bit angry at this meeting, because he had previously filed complaints with OCR as a member of the New York Association of Black Educators but had not received any response.

This meeting served basically as an information session; the advocacy group representatives told OCR staff about the employment system in the City schools and the history of discrimination. The OCR staff made no promises except to say they would conduct a compliance review out of their office that would be separate from the New York City Review being done by the Regional Office. They also said they would act quickly, handling these issues separate from the issues of educational services. OCR staff felt that, because the issues associated with employment discrimination were clear, such a review could be completed in a short period of time.

In March 1976 Martin Gerry sent to a letter to Chancellor Anker describing the complaint: That OCR had received several complaints from

New York City civil rights groups alleging that black and hispanic teachers were being discriminated against and alleging that such discrimination was the result of Board of Education policies in the area of hiring. He stated that OCR intended to conduct a compliance review pursuant to Title VI and indicated that this review would be separate from the compliance review OCR was presently conducting on education services. Garry named John Wodatch and Ted Johnson as the contact persons for this project.

Data Collection Activities and Problems

Working sessions with OCR followed this initial meeting as staff were assigned to work on the additional investigation. Peter Levin, an OCR lawyer, and Ted Johnson, the team leader, came to PEA that spring to review documents and to learn about the employment system of the New York City schools. The whole Review Team later went to the ACLU for five days, pouring over documents that PEA, ACLU, and NYCLU had collected during its own investigations for various court cases. During the following week, the Review Team went to the Board of Education and the Board of Examiners. The members of the Review Team were all physically present in New York City for ten days to begin investigating the area of employment practices. Over the next six months, these same people were in and out of New York City and the Board of Education to conduct the investigation.

Staff people and lawyers from the New York City advocacy agencies often found this arrangement troublesome. They felt that they were constantly telling and retelling people about the New York City school system. Meanwhile, OCR was stepping up both investigations. The Review Staff was encountering major data collection problems that had escalated from earlier in that school year (1975-1976). In focusing on data necessary for the employment issues investigation, the situation became aggravated.

School officials from various districts and schools had been reluctant to complete the OCR requested data forms. The additional request for racial/ethnic data on staff made many of these school officials balk. Two sources of data were used for Letter One, which focused on employment issues: OCR 101/102 forms and BEDS data. The latter had been used in New York State for several years; the OCR 101/102 forms were problematic.

The legal arguments for this study of employment issues were based in part on Griggs v. Duke Power Company³ and Robinson v. Lorrillard,⁴ in which the Supreme Court clearly stated that, if a reasonable alternative hiring system that has a less differential impact on the employment of minorities is available, it must be used. Franks v. Bowman⁵ and Griggs had a bearing on the issue of seniority and hiring.

Two other cases had a bearing on when and how the data were to be collected: Adams v. Matthews,⁶ in which Judge Pratt mandated speed in OCR compliance reviews in the south, and Brown v. Weinberger,⁷ in which Judge Sirica ordered HEW to finish compliance reviews in the north within sixty days of starting.⁸ Although both these cases set up time limits within which compliance reviews had to be completed, data collection problems prevented this from being achieved in the New York City Review. These problems severely limited OCR's work, as the following examples illustrate.

The Review Staff had difficulty getting cooperation from the schools for some of their data collection efforts. The Review Staff began to work

³ 401 U.S. 424 (1971)

⁴ 444 F. 2d. 791 (1971) U.S.C of A. 4th Cir.

⁵ 96 S. Ct. 1251 (1976)

⁶ C.A. 3095-70, U.S. D.C. (1975)

⁷ 417 F. Supp. 1215 (DDC 1976)

⁸ In December 1976, this was extended to ninety days.

closely with the U.S. Attorney's Office to get the data they needed for the study. They had decided that the only way to get the requested data was to start Federal funding termination proceedings against the Board of Education. They did not find the Justice Department to be very aggressive on this issue, however.

The Review Staff also found it increasingly difficult to collect data from the community school districts. According to a December 1975 New York Times article,⁹ five school districts had failed to cooperate with data collection; Anker met with HEW Secretary David Matthews on this issue and agreed to have the districts cooperate. This article also stated that on December 5, 1975, the United States Attorney for the Eastern District of New York was asked to begin legal proceedings.

At Gerry's request the U.S. Attorney's office sent Dick Caro, an assistant U.S. attorney, to a meeting at the Board of Education with community school district board members and officials of the Board of Education. Caro stayed with the case over the next few years. During this meeting, however, he was primarily an observer in anticipation of litigation. A Board of Education lawyer from the Corporation Counsel was there and discussed filing a suit against OCR/HEW. The topic of discussion was the information the government was trying to get through the special compliance reports. The community school boards were concerned that some determinations of violations had already been made, even before the data had been provided. Gerry assured them this was not the case, and that the questionnaires were designed to find out if there were any violations.¹⁰

Following this meeting, Community School Board 21 filed a suit against OCR. The U.S. Attorney's Office (Eastern Division)

⁹ New York Times, December 24, 1975.

¹⁰ Caro observed later that he did not feel as though they were convinced.

countersued in January 1976. A New York Post article explained:

A court showdown looms next week over the refusal of Brooklyn's Community School District #21 to compensate with an "intensive" Federal investigation of possible discrimination in the district's schools. Both sides have obtained show cause orders from Federal Judge Jack B. Weinstein with diametrically opposing goals -- to obstruct the controversial investigation or to remove the obstruction.

District 21 was spotlighted by charges by State Controller Levitt last February that it was padding attendance figures at after-school centers to create extra jobs for teachers and it was wasting at least \$200,000 a year in teachers' salaries because its teachers were not working enough hours.¹¹

District 21's case was an attempt to reopen the old Mark Twain¹² suit, which had been concerned with a desegregated high school in the district. The District tried to sue OCR within the jurisdiction of this case to get an injunction against OCR's data collection efforts. In order for the suit to enjoin OCR/HEW, the court needed to find two things: jurisdiction over the matter of controversy, and jurisdiction over the parties of controversy, which happens when an official document is served upon a person (such as a summons). Since only the Department of Housing and Urban Development had been involved in the Mark Twain case, the court could not grant an injunction unless the plaintiffs made the OCR officials part of the original suit. In this case, as Caro later explained, the U.S. attorney countersued the school district, but not in the Mark Twain case. Rather, a new suit was brought against District 21, the members of the District 21 Board, and the District 21 Superintendent to obtain the data they had refused to submit OCR.

¹¹ New York Post, January 24, 1976.

¹² Hart v. Community School Board #21 512 F 2d 37 (1975).

A second suit on this same issue was brought in late April 1976 against the Central Board.¹³ The U.S. Attorney's Office sued for the release of data. At issue was the Board's completion of the special compliance and the EEO-5 forms.¹⁴ Co-defendants in this case were the Council of Supervisory Associations and Community School Board 26. As the CSA Director explained in an interview in the New York Post, the controversy over the collection of information on students and teachers was approached as a test case. The CSA saw the surveys as "a prelude to establishment of 'ethnic quotas' for the staff." The article described the CSA stance: "The CSA Executive Board this week reaffirmed an earlier policy statement of 'noncompliance' with any ethnic survey of pupils, staff, parents, or the community 'regardless of the source',"¹⁵

OCR had tried to avoid many of these problems through planning and monitoring the data collection as much as possible. The EEO-5 forms had been received by the schools system sometime during the last two weeks of March 1976. The forms were to be distributed in May 1976 and to be returned to the Office of Educational Statistics by May 28, 1976. This did not occur, however. For reasons explained in court, Gerry did not think that failure to complete the compliance reports was warranted in view of the fact that OCR had been working with New York City Board of Education officials since February 1975.

In February 1976 OCR officials had met with the Office of Educational Statistics in an effort to avoid duplication and to lighten the burden on the school system. OCR agreed not to require the completion of certain items by schools in which on-site compliance reviews had been conducted.

¹³ U.S. v. Board of Education and CSA and CSB #26 (CA, 76C 861)

¹⁴ EEO-5 were national forms, whereas the special compliance forms had been whereas specifically designed for New York City.

¹⁵ New York Post, March 18, 1976.

Tentative schedules for dissemination and collection of the reports were determined jointly by OCR and the Office of Educational Statistics. This schedule was outlined in a letter dated March 11, 1976, from Richard P. Vigilante of OES to Joel Barken, the Director of OCR Region II. OCR agreed to be available to attend meetings to answer questions about the special compliance reports. Such a meeting was held at OCR in April 1976; OCR representatives answered questions posed by school officials. This meeting had originally been set for March 18 and then changed. Because of this delay, it was necessary to revise the schedule for distribution and completion of the reports. A revised schedule was sent to Anker on April 8. In this letter, Gerry noted that he was aware that CSA had passed a resolution concerning the collection of certain information (race, sex, and ethnic data).

By April 30, having ascertained through several phone conversations to the Board of Education that the reports and the EEO-5 forms were not in the schools by May 5, 1976, it would be necessary to take legal action. In reply to this mailgram, as Gerry described later in court, Deputy Chancellor Bernard Gifford sent a letter to OCR/HEW (dated May 3, 1976) wherein the Board of Education requested the confidential investigation data and information concerning complaints of civil rights violations in the New York City public school system. Gifford stated that, before the Board administered the special compliance reports at an estimated cost of \$900,000, they wanted a detailed written description of the nature of the "specific complaints" against the New York City schools. He and his staff would check to be sure the data collected were limited to these specific violations. Pursuant to Federal law, this request by the Deputy Chancellor was denied. Martin Gerry replied in a hand-carried letter on May 10, 1976, in which he briefly described the origin of the Review but

maintained the confidentiality of the exact nature of the complaints. He listed the seven areas of OCR's enforcement jurisdiction, stating there were civil rights allegations in all these areas.

As Gerry indicated in court, the delay in the distribution of KEO-3 forms and the Board's failure to distribute the special compliance reports had seriously jeopardized OCR's ability to complete that phase of the investigation prior to the close of the 1975-1976 school year. If the information was not obtained, the effectiveness of the government's investigating efforts would be substantially impaired and unjustifiably delayed. He also made reference to the fact that the named defendants were parties to U.S.A. v. The Community School Board of Education from New York City School District #21^V and that if they had any legal objection to the distribution and completion of the OCR Special Compliance Reports they should have raised these objections in that action.

The Central Board of Education had been making efforts to collect the delinquent data forms. In April, Chancellor Anker suspended three community boards (1, 26, and 29) that had refused to submit racial census data on teachers and administrative staff. These boards had refused to allow the data to be collected because they feared they would be used to establish racial quotas for hiring and firing.¹⁷ Anker explained that, since this involved both State and Federal questionnaires, "the failure of your school district to submit this data jeopardizes the continued and timely receipt of Federal and/or State aid to your district and to the city as a whole."¹⁸

¹⁶Civil Action 76 C148.

¹⁷New York Post, April 28, 1976.

¹⁸Ibid.

Meanwhile, the CSA continued to urge its members to refuse to comply. During the hearing, Amy Lewis, a Review Staff member, testified; she gave an estimate of the manpower costs for OCR for the study thus far. Four full-time staff members from Washington had worked on the review; approximately thirty person-years of processing time and about \$200,000 of data processing had also gone into the study. School system officials estimated the expense of filling out the forms for OCR at almost a million dollars; OCR staff had estimated that each form would take 20 to 45 minutes for a teacher to fill out.

The school officials also tried to claim the costs of the unusual burden involved in characterizing principals and staff by ethnicity, a point that was the basis of the hearing. The school system had had their own problems in getting the staff to fill out their data forms, including BEDS. At that time, over 50 schools throughout the school system had failed to complete the BEDS forms, even though the forms had been requested several months previously, and the forms were required for State aid.

The OCR staff indicated the additional costs they would incur if the survey data were not collected. This data collection effort coincided with in-depth studies in six school districts. If the Review Staff failed to get the survey data, they would have to redo the in-depth studies; an expensive body of research would thus prove useless.

The court (U.S. District Court for the Eastern District of New York, Judge Weinstein) found that: (1) the defendants had cooperated fully with all phases of the government's in-depth compliance examination; (2) OCR had been sensitive to the needs of the City and had attempted as far as possible to reduce the burden of the study; (3) OCR had tried to accomodate itself

to the recommendations and suggestions made by the defendants and had reduced the amount of information requested since the February 1975 meetings; and (4) if they did not get this information, OCR would have to redo all its investigation for that year. The court concluded that OCR was entitled to obtain the information it sought in the special compliance reports and EEO-5 forms and that the defendants were required to provide the necessary information as a matter of contracted obligation. Since the government had a right to obtain this information, the cost and burden of collecting the data is not a defense for the school district. In light of the amount of time left (it was now May 27, 1976) before the close of the school year and the need for the government to do the necessary follow-up work, the defendants were required to fill out completely and immediately all the special compliance reports and the EEO-5 forms.

In early June, the Review Staff got the District Court to grant an injunction against the Board of Education and against all affiliated agencies to have the data collected. The injunction was served on every local Board member, superintendent, and principal, with a cover letter explaining the legal situation and what they, as principals and superintendents, were required to do -- to complete the forms. This forced action resulted in quite a furor; principals refused to fill the required data items. Ultimately some of the principals did comply with the injunction, but the rest were called to appear in court for noncompliance.

The next legal step for OCR was to move for contempt against those who had failed to comply with injunction. There was an attempt to supersede these administrators, but the judge declined to order this. The first contempt action was served against 135 principals; all but about 30 principals finally consented to fill out the forms before they were to

appear in court. As a result, the U.S. Attorney's Office "agreed" to withdraw action against those who did comply at this time, dropping their names from the petition. The other 30 principals were ordered to court for a show cause hearing.

Of the 30 principals who showed up in court in June 1976, 29 said they would comply, although they publicly noted their objections to this data collection. One principal refused to comply; a contempt of court trial was scheduled, in which he was found to be under civil contempt. He was ordered to jail until he did fill out the forms, to be served over the weekends, because his presence was needed at his high school. This sentence drew a great deal of public attention, especially in the media. It was at this point that Senator Buckley intervened on behalf of the teachers and principals to keep them out of jail. This particular principal was able to get a stay of execution, however.

It did not matter to OCR who on a school's staff filled out these data forms. In this case, however, the principal had taken the forms and locked them away so his staff would not be able to fill them out. At any point at which he would have allowed his staff to complete the forms, the proceedings against him would have been discontinued. In September 1976, the principal finally allowed his staff to complete the forms. The U.S. Attorney then moved that the case be dismissed.

Meanwhile, in June 1976 the Council for Supervisors and Administrators intervened in this same case on behalf of the principals, raising various constitutional First and Fourth Amendment objections to OCR's data collection activities. This intervention occurred after the original hearings and was used to join an appeal of the earlier decision with District 18 of Brooklyn. These interventions of CSA and District 18 were declared moot, however,

because they had already turned in or promised to turn in the required data.

The Judge in this case retained jurisdiction of the case and therefore of the Review. The OCR Review Staff now felt that they had an advocate in the court supporting their work. In addition, OCR had obtained support from the U.S. Attorney's Office for the Eastern District when they represented OCR in the original case. This support carried through to other of OCR's legal problems, such as when they needed to seek approval for contempt proceedings. They found this office easier to work with than the Justice Department in Washington.

A third issue of contempt related to the original suit came up after the November letter (Letter One) was submitted to the Board of Education. Approximately nine school districts said that filling out the forms was a criminal violation under State law and were therefore asserting their Fifth Amendment rights. As previously explained, this argument was not applicable to the situation, however. The principals could not argue that filling out forms violated their personal rights, because they were merely representing a larger entity, the Board of Education. If filling out the forms went against their personal views, they could have a subordinate fill out the forms. This latter argument was used in court to resolve the case; the forms were filled out by other staff members and the case and action ended.

In September the NAACP Legal Defense and Educational Fund in Washington took OCR to court and obtained what became known as the Sirica order. This order in part established time lines for when review efforts were to be completed.

Throughout OCR's data collection efforts, the Board of Education seemed to be "antagonistic" and did not want to be investigated. Moreover,

Board of Education officials would often refer to this Review as a research project, rather than a civil rights investigation. Amy Lewis found, however, that although the Board of Education publicly resisted the data collection, individual staff members were quite agreeable. She blamed UFT for any resistance the Review Staff ran into. She felt the issue of data collection had been around for a long time, but that only now did the Union take a strong stand, primarily because of the civil rights issues.

The Review Staff did get strong administrative assistance, particularly from the Deputy Chancellor, Bernard Gifford, who helped them throughout the Review. He was interested in the Review as well as knowledgeable about the New York City public school system. OCR (especially the Director) also found the Deputy Chancellor to be one of their toughest adversaries, when he thought the Board of Education was right, he was a very effective representative.

Other Board of Education officials helped the Review Staff. In July 1976, before the first letter came out, Karen McKenzie met with the Board of Examiners, after being referred by the Board of Education's Division of Personnel. The Review Staff reviewed some of the Board of Examiners' tests used from 1968 to 1974 to look at possible biases in these tests, though examining mostly in the larger teacher licensing areas. The Board of Education had worked with OCR to look at the statistics on the tests used by the Board of Examiners.

Data Analysis Activities

In April 1976, as OCR staff members investigated the issues raised by the Rubinos lawyers and NAACP lawyers, these same lawyers helped the OCR staff to interview "victims" of the lay-offs -- their clients. One Rubinos lawyer arranged a meeting at the end of April when all the complaints of the

Cheese case could meet a one or two team of OCR staff as part of the investigation of their complaints. The OCR staff wanted to interview each of them for more facts, and to ask them to participate as witnesses at any HEW administrative hearing that might result from this investigation.

The Review Staff generally found the issues of Letter One -- employment practices -- easy to investigate because the available data base was suitable for this sort of investigation. The only problem, according to one staff member, was that they had to figure out exactly what data they wanted to collect. This involved getting specific information from the Board of Education on their rank-order list, figuring out how to collect racial/ethnic data on staff, and examining other practical problems. The analyses themselves were simple. The Review Staff was able to figure out the New York City system of hiring by developing a flow chart of how one enters the system to the point of teaching. These charts ultimately became part of the final analyses, which were carried out during late August. The next step was to decide how to get the data that would show whether the New York City school system's method of hiring was discriminatory. The Review Staff looked for exceptions to the procedures and the rank-order list, checking all the steps from the time someone applies to when she/he is assigned to a school. The final problem was to tie together the legal theory and the facts related to the issues of employment discrimination.

Other Board of Education staff recalled that much of OCR's data for Letter One were things OCR had asked the Board of Education to obtain. The Review Staff had met with the Deputy Chancellor's staff as late as October 1976 to discuss obtaining data.

Not all the data came in as they were needed, however. As late as November, District 15 still had not completed the forms. In fact, the

superintendent's wife was one of the resistant principals. Peer pressure and union pressure accounted for much of this resistance, as the OCR staff speculated.

The Review Staff processed data when they could, leaving gaps wherever necessary. They found they did not have the time to do the necessary editing and follow-up they wanted to do. The Special Compliance Report responses had to be key-punched and processed. The contractor had to document the data, looking for errors. According to plans, the data would then go to Delta, who had to define the sorts of analyses that should be done and with which data pieces, since the data often came from different sources. Several analyses had been done each year of the Review, so there were reports as far back as 1973. These first reports identified factors to be selected later for examination. Some factors were dropped after they looked the data over; for instance, an examination of the Title VI issues related to differential salaries but did not uncover anything. Part of their problem in analysis had to do with the massive data file: 50,000 teachers and principals.

The Review Staff maintained contact with the Rubinos lawyers to keep in touch with the law suit and the issues. The OCR findings, however, were different from the case, which focused on the tests of the Board of Examiners. In the OCR conclusion, they looked at the date of the exam (as related) and the use of rank order and their relationship to merit and fitness arguments. There are two types of discrimination related to the use of rank order lists. There is a potential for discrimination relative to the cut-off score, as it is complicated by the fact that the minority group applicants test scores are toward the bottom of the list. In addition, there were no relevant reasons to exhaust the lists of one year before hiring more recent applicants simply because the former test applicants

took the test first. The result of this system had been to hire applicants who tested more poorly than more recent applicants, who may have had better test scores. Their statistician looked at who (in terms of minority or nonminority group applicants) were passing tests and where they fell on the rank order.

The Interest Groups and Continued Data Collection

Although the investigation for letter One was relatively easy, OCR still had difficulty with the Review. Even after the data collection problems were resolved, they still had setbacks. The interest groups remained skeptical of the outcome after meeting with OCR in Washington, although the lawyers stated there would be an investigation. It was thought that the politics of an election year would tend to slow down the Federal bureaucracy more than normal, and that little action would actually occur.

Correspondence among the advocacy groups in September 1976 demonstrates their concern over the Review. The minority group agency lawyers, based on a letter received from John Wodatch (of OCR), felt the investigation did not sound encouraging. In essence, what Wodatch and Ted Johnson (also of OCR) had said was that, at this time, they could not draw any conclusions about the effect of cutbacks on the employment of minority teachers by the New York City school system. They then said that a letter of findings would be going to the Board if necessary, if it was determined that violations of law had occurred in the layoff procedures; appropriate legal remedies, including but not limited to an injunction, would be sought.

According to Martin Gerry, the data collection hassles prolonged the review by a year or two. Every time OCR tried to collect data of any significance, they faced resistance from the CSA or the Board. This resistance would eventually end, but a year would go by. In Gerry's estimation, this was a way for the Board and the CSA to buy time; he had

the feeling that they were waiting for a change of presidents and a new regime, for someone more sympathetic to take office in Washington. It was his opinion that they were using a strategy of trying to "wait it out."

In fact, all through 1976 OCR had difficulty with its data collection forms. During the summer, OMB held a hearing on OCR's requirements for data collection. Nancy Cornell* of Advocates for Children made a request of Ray Luory of the Statistical Division of OMB to be allowed to speak about the requirements for record keeping and student discipline procedures. Cornell's argument was that OCR data collection was needed to provide evidence of discriminatory and excessive use of discipline. At the end of July 1976, Cornell sent a memo about these hearings to the various advocacy groups, listing those individuals and groups who were for and against the data collection. Those against were all school administrators, and she had noted that "their own Dick Vigilante" had only asked for more money to implement the surveys. Those for the surveys were Children's Defense Fund, the NAACP Legal Defense Fund, PEA, the Lawyers' Committee for Civil Rights Under Law, American Friends Service Committee, Center for Law and Education, Board of Education staff, and other interest groups. Cornell later sent a letter to the American Jewish Congress describing the procedure for confidentiality of OCR forms. Later, the American Jewish Congress wrote in the New York Times¹⁹ against the data collection, asking that HEW destroy ethnic questionnaires, warning HEW that the use of forms could lead to a "constitutional challenge" and saying that identifying individuals by race/ethnicity leads to future discrimination. Cornell responded to the American Jewish Congress letter by sending one to HEW Secretary David Mathews, in which she described a

¹⁹New York Times, August 1, 1976.

pro-data-collection stance supporting the OCR required racial/ethnic identification of individuals, especially for the survey of schools in New York City. Moreover, she felt outraged by the anti-data-collection response of the American Jewish Congress.

Difficulties occurred during the fall too, as a New York Times²⁰ article noted. The Ford Administration blocked a move by HEW officials to take a racial census of the country's 16,000 public school systems. It noted that Marian Wright Edelman of the Children's Defense Fund had sent a telegram to the Office of Management and Budget, calling it an outrage.

The final problem was with the timing of the letters. OCR had wanted to send a letter during Summer 1976, but the Board of Education did not send the data until July because of the litigation. Gerry, the Director of OCR, had notified the Domestic Council in August, saying the letter would go out in the last week of October or the first week of November — i.e., at election time. He never heard any response from them about the timeliness of this action.

In November 1976 two significant events occurred. Jimmy Carter was elected president on November 2, returning the Democrats to the White House, and on November 9 the first letter of findings was sent to the New York City Board of Education by OCR.

The Letter

The November 9, 1976, letter from the Office for Civil Rights to the Board of Education of the City of New York contained a summary analysis of OCR's investigation into the employment practices of the New York City public schools. This was a part of the compliance review.

²⁰New York Times, October 20, 1976.

was doing of the entire school system. According to the letter, the New York City school system was found to be in noncompliance with Title VI of the Civil Rights Act of 1964 and with Title IX of the Education Amendments of 1972. In summary, the violations are as follows:

- The New York City public schools denied minority teachers full access to employment opportunities through the use of racially discriminatory selection and testing procedures and through the use of racially identifiable employment pools.
- The New York City public schools assigned teachers, assistant principals, and principals in a manner that has created, confirmed, and reinforced the racial and/or ethnic identifiability of the system's schools.
- The New York City public schools assigned teachers with less experience, lower average salaries, and fewer advanced degrees to schools that had higher percentages of minority students.
- The New York City public schools denied females equal access to positions as principals and assistant principals throughout the system.
- The New York City public schools provided a lower level of financial support for female athletic coaching programs.
- The New York City public schools deprived female teachers of seniority rights and other compensation through failure to eliminate the effects of past discriminatory leave policies.

Gerry indicated in this letter that the Board of Education had to develop a plan to submit to OCR within 90 days of receipt of the letter. This plan was to describe the remedial steps that the New York City public school system would take to bring the system into compliance with Title VI

and Title IX. Gerry offered his staff's cooperation in helping the Board of Education to more clearly understand what was being asked of them.

Reactions to Letter One

The issues dealt with in Letter One were of concern to more groups than the Board of Education. Many groups had supported the OCR investigation; many others had been fearful of the policy potential of the data gathered. The issuance of the first letter thus led to a flurry of activity by the advocacy agencies and special interest groups.

In some cases, the OCR Review Staff had come up with surprising results on issues of concern to the interest groups. These findings on the employment practices of New York City schools were not always what the various advocacy groups had anticipated. What had initiated the study had been complaints about "last hired-first fired" layoffs; blacks were disproportionately represented in the "last hired" category. OCR did not find civil rights violations around this issue, however. They therefore looked for violations in employment generally. At a meeting in Williamsburg (Brooklyn) following issuance of the first letter, the participants could not believe OCR's information from the EEO-5 forms. The findings had demonstrated that minorities had not been laid off at a disparate rate as many people had believed, and that many white teachers had also suffered from the layoffs. What those concerned had lost sight of was that, when a teachers is laid off in one district, he or she may be placed in another district.

Many people had reacted very emotionally to the layoffs. Some wanted to do something about discrimination they thought existed, but depended on "horror stories" rather than facts to make a case for changes. Many people

felt the minority teachers were "disappearing" from the system, but according to the data, this was not true. The fact that the OCR data did not support the case they had thought existed intensified their feelings.

The various advocacy agencies began to take action, toward directing their efforts toward the Board of Education or toward OCR. The Public Education Association sent a quick news brief to the press on what they thought the Board of Education should do in response to OCR's letter. They also tried to get at least one member of Congress (Rangel) to join in with a coalition of associations (Association of Blacks and Puerto Rican Educators and Supervisors, PEA, ACLU, Urban League) to pressure OCR/HEW to do its job. A letter for signatures was circulated among various agencies, including the Community Services Society and the NAACP.

PEA lawyers were disturbed about the figures that revealed no disproportionate effect on minorities as a result of layoffs. One PEA lawyer called Gerry's office and discussed the issue with Wodatch shortly after the letter came out. She later got feedback from Bernard Gifford and from Frank Arricale, Director of the Board of Education's Division of Personnel, who told her the recertification system had helped the "blacks." The PEA lawyers agreed, however, to look into the matter further with the other Rubinos lawyers.²¹ Shortly thereafter, the NAACP, in addition to signing the PEA letter, sent a letter to Martin Gerry on behalf of the Coalition of Concerned Black Educators about the administrative complaint they had filed.

Many other agencies also sent comments to the Board of Education and made public comments on these issues. Articles were written that voiced opinions on the issues or on actions the Board of Education should take.

²¹ By this time, Carol Ziegler, who had participated in the Rubinos and Cheese cases as a Legal Services lawyer, had joined PEA's staff, and remained involved in these proceedings in that capacity.

One was by the Association of Orthodox Jewish Teachers, which berated OCR for ignoring the importance of the quality of teaching and learning to the point of "exacerbating divisiveness based on skin color, ethnicity, and gender."²²

In New York Teacher,²³ an editorial by Albert Shanker, president of the United Federation of Teachers, described Letter One as "both illogical and destructive, and it will bring even more chaos, confusion, and conflict to our schools — which are still reeling from massive budget cuts." Shanker's solution was that OCR, instead of withholding funds, should get New York City more money. He claimed Gerry's letter was designed to pit "white" against "black," "union militants" against "civil rights activists."

New York Civil Liberties²⁴ summarized the events and related the letter to a NYCLU complaint filed in 1975. The cooperating organizations in that complaint were the ACLU, NAACP, Urban League, Public Education Association, Puerto Rican Legal Defense and Educational Fund, the Coalition of Association of Black and Puerto Rican Educators and Supervisors, and ASPIRA, who, with NYCLU, congratulated OCR/HEW. Although they took issue with some of the findings, NYCLU requested that they be consulted by HEW on required changes of Board policy; they further stated that they wanted affirmative action plans to be included in any agreement.

A resolution adopted by the New York Metropolitan Council of the American Jewish Congress in January 1977 recommended that OCR withdraw its demand for a "remedial plan within 90 days and its threat to withhold the money." In summary (of a 33-page report) they said that the complex issues of law and educational policy raised by the OCR report could not be resolved by administrative fiat or by a process that lacked the fact-finding techniques and due process protections afforded by court action.

²²Association of Orthodox Jewish Teachers, Vol.11.

²³New York Teacher, March 6, 1977

²⁴New York Civil Liberties, January-February, 1977

All this public outcry was unimportant, however. The Board of Education was still responsible for deciding how to handle the issues cited by the OCR. They could listen to the various complaints and strategies for change or opposition proposed by the interest groups and interested individuals, but they would incorporate these concern as selectively as they saw fit.

The Board of Education's Initial Response to Letter One

After Chancellor Anker received Letter One, he made a public statement to the press, after which he turned the letter over to the Corporation Counsel for review. The City's lawyers reviewed the letter and decided something needed to be done by the Board of Education as a response. In December 1976, the Chancellor established a special committee to study the letter and to design a response. The members of this committee included:

- Bernard Gifford, Deputy Chancellor, appointed chairperson of the committee;
- Frank C. Arricale II, Executive Director, Division of Personnel;
- Bernard Ezig, Special Assistant to the Deputy Chancellor;
- J. P. Finneran, Executive Director, Office of Labor Relations and Collective Bargaining.
- Ethel Fitzgerald, Chairperson, Board of Examiners;
- Harvey Garner, Superintendent, District 18;
- Roxie Joley, Assistant Superintendent for Richmond and Brooklyn High Schools;
- Helene M. Lloyd Assistant Superintendent, Office of Funded Programs;
- Alfredo Mathews, Executive Director, Division of Community School District Affairs;
- Carmen Rodriguez, Superintendent, District 7;
- Michael Rosen, Director, Law Office, and Counsel to the Chancellor;
- Joseph Saccente, Special Assistant to the Chancellor;

- Richard Smith, Director, Office of Equal Opportunity; and
- Lynette Tucker, Office of Equal Opportunity.

The response drawn up by the committee would be presented to the Board of Education, who would then be responsible for the actual response to the Office for Civil Rights. Tasks were divided up among the committee members after they decided what should be included in a response. This committee actually accomplished very little; it met only a few times after the initial meeting. The draft response was prepared by the Deputy Chancellor's office.

The Deputy Chancellor had been put in charge of preparing the response. Politically, the Deputy Chancellor, a young black intellectual with an independent style, found himself in a no-win situation. On the one hand, the Letter One issues stood in conflict with present practices of the school system. On the other hand, the conclusions of Letter One were thought to be based on a poor analysis, which could allow the letter to be dismissed on technical grounds. The Deputy Chancellor and his staff could either "fire back" at the Office for Civil Rights or they could bolster some of OCR's conclusions through their own analysis.

They chose to do the latter. They first identified a number of issues to be examined in preparing a response, including:

- The decentralization law and possible legislative action (examine the law in terms of the allegations of OCR's Letter One and in terms of the selection processes and authority of the Board of Education);
- Transfer rights (to examine the effect of present and past teacher transfer policies and on staff integration and to suggest changes that might promote staff integration);
- Minority personnel laid off and rehired (to review the statistical information on teachers laid off and rehired, to determine the effects on minorities, and or recommend changes as are needed);
- The Lyons Law
(To reexamine this law which would have the effect of limiting employment of teachers to NYC residents to see what problems exist for imposing such a limitation);

- Special Circular 30 and parent committee guidelines (to reexamine the materials having to do with supervisory staff selection to make recommendations in order to guarantee that these materials and guidelines will be nondiscriminatory on the basis of race and sex, or other non-job related factors);
- Affirmative action in recruitment and in hiring substitute teachers (to analyze past and present personnel policies and practices that actively promote the recruitment and hiring of minority group teachers);
- Coaching girls sports (to analyze past and present policies relative coaching girls' sports, especially those pointed out by OCR); and
- Maternity leave (to analyze policies and OCR findings in this area).

They tentatively set their own deadline for completion at 15 days before the Board of Education's deadline. (The Board later appealed and received an extension.) They also developed several workplans and began to consult with various interest groups for input on the issues.

The Deputy Chancellor's staff included three senior assistants, one legal researcher (a lawyer from the legal branch of the Board of Education), and part-time assistance from several other staff members from his office. The four central people (the Deputy Chancellor and his three senior assistants) managed the research from the initial discussion of issues. In general, however, these staff members found the study of the issues to be disorganized and incoherent. Much of their time was spent working on other matters; they met occasionally to rethink the final form of the response. The actual writing of the response did not take place until the very end.

These issues were not new to them because they had been concerns of the Deputy Chancellor's office in the past. The staff agreed with many of the findings but had problems with the way OCR had reached its conclusions. Their experience, however, had been primarily with Title VI and not with

Title IX; this latter area generated very little interest in the Deputy Chancellor's office and received little attention.

The Deputy Chancellor's efforts focussed on several areas: legal, policy, interest group input, and data analysis. The staff began by looking into relevant court cases and legal actions. They were very familiar with the Chance and Rubinos cases, the issues involved, and their history. They also considered the standards used to show discrimination. The decisions in Washington v. Davis²⁵ which had placed on the intent to discriminate, rather than the emphasis on the discriminatory effect of personnel practices, as was argued in the Griggs v. Duke Power Co.²⁶ was viewed as an applicable argument in these Title VI proceedings.

The Deputy Chancellor's staff had previously conducted a study of seniority and layoffs as a means of examining the issues of race and employment discrimination in the schools. They were therefore familiar with the issues and with the legal arguments. They examined quotas, studied the ASPIRA decision,²⁷ the problems of voluntary compliance, and affirmative action plans. They also decided to try to eliminate the dual entry system.²⁸ At one time they even considered obtaining a judgment against the State because of the State Education Law regulations concerning teacher selection. As it was explained by a staff member, this was seen as a way of getting around the

²⁵ 44 LW 4798 (1976)

²⁶ 401 U.S. 424 (1971).

²⁷ ASPIRA of New York v. Board of Education of the City of New York, This is a class action suit brought by Puerto Rican public school children, their parents, and ASPIRA against the Board of Education to ensure the rights of the children as guaranteed by Lau v. Nichols and the Civil Rights Act. The consent decree was mutually agreed upon as a means of resolving the case. Under this, the Board of Education must use an improved method for accurately identifying and classifying Spanish-speaking children. In addition, these children (both English and non-English speaking) are to be provided programs in which they can effectively participate. If necessary a learning program in Spanish will be provided.

²⁸ There are two hiring methods established by New York State law. One method is the open competitive examinations given by the Board of Examiners, which form the basis for the rank-order lists by subject

State law without changing the law. This could have been achieved only through collaboration with the Board of Examiners, however.

The Deputy Chancellor's staff also looked into the issue of teacher job entry mechanisms. They studied the National Teacher Examination (NTE), colleges attended by teachers in the New York City schools and the relationship between college attended and success on the exam. The staff also studied the NTE in terms of job analysis, validity, and job relatedness. Some of the staff, with other Board of Education administrators, consulted with the Educational Testing Services (ETS) on the problems of validity, reliability, and the other tests used by the Board of Education.

Gifford's staff explored alternative mechanisms for affecting the percentage of minority teachers on staff, including the possibility of a residency requirement for New York City employees, which might have a positive effect on the hiring of minorities and therefore on staff integration. They later dropped this line of inquiry because it did not seem to be a particularly fruitful one.

One staff member worked on affirmative action issues and the law concerning maternity leave. Others studied transfer rights and summarized the issues of personnel layoffs and retirement. The staff also looked into the statutes on voluntary compliance. They studied the Board of Examiners, but the information proved to be too politically explosive to be used. In addition, they did some research on decentralization as it related to these issues.

One administrative assistant met with committee members as they worked on preparation of a response. Only one member of the committee wrote a

matter from which teachers are hired. The other method permits staff to be hired out of rank order from the lists or hired when they have achieved a minimum score on the National Teacher Examination (NTE). This alternative method can only be used in selecting teachers for the elementary and junior high schools scoring in the lower 45th percentile on a comprehensive reading examination administered annually to all pupils in schools under the jurisdiction of the community school districts.

report: Roxie Joley prepared a report on the issue of coaching in women's sports. This area of the OCR findings had been confusing to the Deputy Chancellor's staff; they thus chose to rely on Joley's interpretations when they prepared the draft response.

There was some question about the validity of the Title IX allegations. In fact, one Board of Education official hypothesized that these were included because of the pro-feminist beliefs of certain OCR staff. These issues did not receive as much attention as the Title VI issues, either at the Board of Education or at OCR.

Material on Letter One was sent to various advocacy agencies and interest groups. The Deputy Chancellor included seven or eight questions for the agencies to respond to, as the Corporation Counsel had suggested. The organizations included in this mailing were selected according to the interest they had previously shown in the schools and in civil rights; this came to about 75 organizations. In addition, key people, such as members of the State Board of Regents, were sent copies of the material. Responses to the Board were circulated among various officials at the Board. No requests for input were sent to the principals, and little information came in from the community districts. One staff member from the Deputy Chancellor's office worked with these organizations and agencies. He kept track of written responses and handled calls and letters related to the response the Board of Education was planning to send.

Most of the responses received were extreme: to tell OCR "to go to hell," or agreeing "Yes, we should have a quota system," or suggesting some other major change. Very few responses went into any analyses. All the responses did include a list of what should be done. The staff member working with these groups then asked Board members for responses to these comments. He noted that civil rights groups were more interested in the Title VI issues but not so much the Title IX issues. With more conservative groups, the reverse was true.

FEA sent a general response to the President of the Board of Education on January 14, 1977, voicing support for a strong affirmative compliance plan. development of a preferred pool from laid-off staff for reemployment, the unranking and merging of all eligibility lists, and a system of hiring minority teachers at a proportional advantage to correct the past disproportional hiring patterns. The American Jewish Congress set up a committee to investigate the issues of Letter One and to propose a response. Some groups sent both official and unofficial replies, feeling they must write for their constituents/organization but also must go beyond that framework.

The UFT, for example, in addition to Shanker's informal talks with the Deputy Chancellor, gave two responses: one, a legal memorandum, and the second, a discussion of civil rights and the UFT's philosophy. The UFT first pointed out that they believed women and minorities were being discriminated against but felt that the OCR letter shed no light on how this situation could be corrected. They criticized (a) the comparison of the relative percentages of minority children and minority staff in the school system; (b) hiring practices related to minority teachers, which place them in minority districts and schools a result of a State law designed to hire minority teachers; (c) the discriminatory effect of the licensing system, which was being challenged in the Rubinos case; and (d) the supervisor selection system, which the court had earlier struck down and replaced with an interim licensing system including an on-the-job evaluation component. The UFT suggested a number of methods for change, including centralizing the teacher hiring and assignment system and bringing in State and Federal monies to help hiring. It concluded by pointing out problems currently facing the Board of Education (e.g., the fiscal crisis), and suggested certain hiring plans, such as the use of pre-retirement plans. The UFT letter spoke of a single hiring system and the development of relevant, objective standards of hiring, and emphasized that the Board of Education should request further Federal aid in this matter.

ACLU sent a letter to Gifford, but as with many organizations, nothing

happened after this response was sent. One of their lawyers knew the Deputy Chancellor, however, and they consulted each other informally. They found it necessary to avoid formal contact because of their involvement with the Rubinos case.

Some advocacy groups thought the Board of Education (specifically Gifford) was consulting only with the UFT and with such organizations as the Anti-Defamation League (ADL) and the American Jewish Congress (AJC), but not with the civil rights groups or citizens' groups, which tended to be pro-compliance. The fact that the Board of Education took an anti-compliance stand was seen by the pro-compliance groups as encouraging resistance. Even saying nothing would have been more helpful, as those with whom the Board of Education staff consulted tended to corroborate a negative viewpoint. This biased attention also seemed to strengthen the stand of the anti-compliance groups. The longer the delay, the more intractable the position appeared to the Rubinos lawyers and the NAACP lawyers, for example.

The Deputy Chancellor decided not to ask OCR for additional information and to look at the situation on his own. In addition, his staff was not sure how OCR got some of the information used in the report, such as the past ethnic data on those who took the Board of Examiners tests. They knew the Board of Examiners never kept ethnic data until the Rubinos case required it, and so speculated that OCR used census tract data for this analysis.

After Letter One was sent to the Board of Education, the Board did little to begin to negotiate with OCR over the response they were preparing until the Federal administration changed and Gerry was removed from OCR. In any event, it was known that Gerry would not be involved in

the forthcoming negotiation process.

Although the study being conducted by Gifford's office was the result of a special directive from the Chancellor, Anker had little involvement until its completion. He and the Deputy Chancellor did have several meetings with various politicians, including Senator Javits, to discuss the issues, however.

The Board of Education, meanwhile, was sensitive to the politics of the situation as well as to the equity issues raised by Letter One. There was potential for a redistribution of power in the New York City schools. Politics involved the whole spectrum of ethnic groups, religious groups, unions, and so forth active in New York City. As an example, the Board of Education staff needed to consider the viewpoint of the American Jewish Congress as well as those of black politicians in outlining Board policy. The staff tried to get an idea of what these groups thought, on such issues as seniority and layoffs. For instance, they were aware that the UFT's position is to protect jobs, to extend jobs, and extend rights within jobs.

The final aspect of the Deputy Chancellor's work was to extend the analyses done by OCR. His staff criticized OCR for the quality of their statistical analysis, especially in light of how long they had had to research the issues, and researched the problems themselves. Many of the Deputy Chancellor's staff felt they had to help OCR keep the issues alive because the analysis was technically so poor it could easily be taken apart.

They found the controversy surrounding the policy analysis to be a difficult one, as well as one complicated by what the Board of Education would choose as an option, in light of the various interests, by the quality (or lack thereof) of the data in the OCR Review Study, by the time available, and by the decision of whether or not they should do a good job of analyzing

the information.

The Board's data processing was not finished until late in February. Not much original data collection was done beyond the collection of data on staff segregation. The Deputy Chancellor's staff looked over the conclusions drawn by OCR before beginning new analyses. For instance, staff members criticized OCR for comparing staff and students according to the relative percentages of minorities/non-minorities, describing it as a phony issue. They had used the same technique in their own research, and therefore were aware that this type of analysis had some meaning, not so much because of the disparity involved but because of the under-representation of minority staff.

In researching the Title VI allegations and the problems of hiring and selection, the Deputy Chancellor's office found significant statistical disparity in minority staff access to the school system. They needed to find out if the disparity was a technical matter or a legally significant one. Because of the technically faulty analysis done by OCR, the Deputy Chancellor's staff spent time determining how to more clearly demonstrate the problems that did exist. They felt that demographics and labor pool analyses should be used to examine the issue of the racial distribution of teachers and pupils.

New analyses were done for some of the major issues. The whole process of selection of staff was examined statistically through weighing various characteristics. A "rational random lottery" system was selected as an alternative means of teacher selection beyond the use of random ordered lists. The statistical analyses for this were done by pulling together various data files, mostly from the school profiles. Teacher ethnicity data were available only in the aggregate; years of service was gotten from the payroll files; other ethnicity data were obtained from the BEDS files.

The staff developed a teacher selection model. They selected those factors that might prove to be job-related, such as school scores, honor society membership, exam scores, and achievement. Although there was no consensus on the importance of each of these factors, weightings of factors were not assigned because the variables were too "changeable" and the staff wanted to avoid "fixing" the outcomes by assigning particular weights. Highly correlated variables were then put together to be worked into a model.

The staff also tried to do a brief labor market analysis, but it came to be nothing more than some "analytic handwaving," as one staff member described it. They used econometrics to illustrate the problems involved in analyzing the accessing problem. Their concern, which influenced their method of analysis, was to encourage change in the staff selection procedure.

According to their method of analysis, there were two parts to the access question to be considered: (a) eligibility — how is one (and what happens when one is) qualified and put into a hiring pool; and (b) once one is hired, where does one go?

Inherent in eligibility test selection measures is the question of test validation, a question raised in the Rubinos case. What happens to a teacher after he/she is hired is related to the rank-order lists: the date of the test, and place on the list, and the requirement to exhaust old lists before starting new ones. The Deputy Chancellor's staff attacked this problem for practical reasons. It was their assumption that "smart" people would not wait around for the lists to come to their name; thus, the better people are never hired. This was one basic argument for getting rid of the "dating" problem.

The use of rank-ordered lists of test score results was the most

difficult factor to argue against because people equated place in rank with degree of smartness. One difficulty was the extreme to which scores were compiled for rankings; differentiations of scores were carried to the third decimal place, although the quality of the test was not sufficient for such close discrimination. In examining this problem, the staff consulted staff from Educational Testing Service (ETS). They found that ETS was working on a similar problem because the NTE exam had come under so much criticism in the courts.

The Deputy Chancellor's office also worked to get rid of the alternative system of hiring. They noted that OCR had ignored the fact that this particular hiring system had been set up as an alternative to the Board of Examiners process which was restricting minority teachers' access into the schools, because of the waiting lists and possible discriminatory affects of the Board of Examiners' tests.

The staff knew they were going to encounter problems with any suggestions they made, because their attempts to bring about change would have an impact on many people. When they questioned areas within the Board of Examiners' responsibility, the head of the Board of Examiners defined their policies. The various unions were also sensitive to possible staffing changes.

The staff had to decide on a format for conducting the various analyses. They finally decided, under the Deputy Chancellor's direction, to group schools by the percentage of minority students and then look at the ethnicity of the teachers. They could thus find out what percentage of teachers were in which "group" of schools. Although New York City did not have enough minority teachers for them to be grouped disproportionately in particular schools, they could show that there was an unequal distribution of minority teachers across the types of schools when compared to the distribution of non-minority teachers across the schools.

All data were presented in bar graphs as well as tables for more

dramatic effect. Variables chosen for analysis were salary, education, experience, and ethnicity of teachers; whether a school had free lunch; and the relationship between these factors and the characteristics of the schools. The schools were aggregated according to elementary, junior, and senior high school classification and by community. Special schools were left out of the analyses because their policies did not follow the same rules as the other schools.

All the planning was done in January 1977; February and March were devoted to analysis and writing. A first draft was written in March. With the first response due in two weeks, a report had to be made to the Board of Education. When the first analyses were done, a meeting was held with Anker at which the Deputy Chancellor made a presentation of his staff's findings. A draft was then sent to the members of the Board of Education.

The Draft Response

In the draft response written by the Deputy Chancellor, some of the issues and analyses were stronger than others. It had been relatively easy to deal with the Title IX issues, although the coaching issues were never resolved.

According to later interviews, the data on staff assignment were presented first, "punching them (the Board members) hard between the eyes" with the impact of the findings. With this strategy, the Deputy Chancellor's staff hoped the Board of Education would agree to anything asked of them next. The Board had not realized how bad the situation was in the disparity of teacher assignment.

The Deputy Chancellor's staff next presented the issue of minority access to teaching positions for which the analysis was not as strong. Many groups — UFI, Board of Examiners, AJC — had criticized OCR's analysis of this issue; they had

compared the percentages of teachers in each ethnic group with the percentages of pupils in those groups in the school system to demonstrate access problems. OCR never said the Board of Education had to remedy this situation, but only used these analyses as an indication of hiring problems within the Board of Education. As the Deputy Chancellor's staff considered the fact that there were not enough minority teachers, they examined factors that were keeping minority teachers out, such as the rank-order lists. In the draft response to the Board of Education, they therefore suggested using other factors without abusing the "merit and fitness" issues, which would be of concern to outside organizations.

It had been the Deputy Chancellor's plan to make the point that OCR was right on this issue and not let the Board of Education "off the hook" on these problems. He wanted reform, and therefore wanted to develop a convincing argument. He and his staff thus presented the data in such a way that the circumstances would look bad, and did not mention the other ways the data might have been presented or the ways the OCR argument might have been taken apart. This was summarized in an interview with a staff member from the Deputy Chancellor's office: "If you're the one making all the options as in this study, you can set up straw men so you get them to choose the one you want."

The Board of Education had asked the Deputy Chancellor to come up with options for their decision-making. For the teacher selection problem, the Deputy Chancellor offered two options that were too extreme to be selected, which left only the third option. The first two methods of selection were a free market system or a total random selection; the third option was to devise a method of stratified random selection. Clearly the third option was the only one the Board could select. The presentation of the

arguments clearly and forcibly helped to determine the outcomes of the decision-making. This method did not work completely, however. The Board of Education rejected the first two options, they wanted to avoid change. They therefore did not accept the Deputy Chancellor's findings, and did not approve his draft response as the one to be sent to the Office for Civil Rights.

The Board's Final Response

After the Deputy Chancellor's presentation to the Board of Education, their next step was to decide who was to write the response. The Board of Education was not happy with the Deputy Chancellor's findings. The head lawyer at the Board of Education was therefore assigned to write the response. He, in turn, "lifted" parts of the Deputy Chancellor's draft response for the Board of Education response to OCR. In some cases, he went over the issues lightly. The Deputy Chancellor's staff advised him as he wrote the response. They wanted to see what they could do to have the Board's response reflect the Deputy Chancellor's view. The head lawyer worked to control the tone of the response, however, knowing the constraints the Board was under. The Board would delete anything that implicated the Board of Education by suggesting that some "things" were wrong. The Deputy Chancellor's office helped to supervise the typing, however, and kept any reference to the Deputy Chancellor out of the response.

None of the information from the first draft by the Deputy Chancellor leaked to the press until the second draft was prepared, although the second draft was never sent to the Board of Education. On April 11, 1977, before the formal response went to OCR, there was a news leak on the second draft findings to the New York Post. It described the findings of "a confidential Board of Education staff study." In addition to citing several findings

of the study, it also suggested that:

The study, prepared by the staff of Deputy School Chancellor Bernard Gifford, is expected to be revised and hotly debated before submission to the Board of Education later this week.

The Board, which has maintained that any ethnic imbalances are due to factors beyond its control, has an April 18 deadline to answer bias charges from the U.S. HEW Department's Office of Civil Rights.²⁹

The Deputy Chancellor's staff felt the Board of Education response was unresponsive, giving the appearance of being very committed but in fact being "wishy-washy." The equal opportunity plan included was from the Deputy Chancellor's draft with only the language changed, as one staff member later explained. The final outcome of the Board of Education response was a radical modification of the Deputy Chancellor's proposed response with no reference to any adjustments in the Board of Examiners.

The response was sent in a week later than expected, and was hand-carried to the regional OCR office (April 22, 1977). A summary of the report was sent to various groups, including the UFT, CSA, PEA, and various Jewish organizations.

The Deputy Chancellor's office did not let the Letter One issues addressed in their drafted responses die. They prepared a working paper to document the analysis behind their response and to help document these issues. This report was sent to a private mailing or political groups, community organizations, State legislators, union officials, newspapers, reporters, and civil leaders. The Deputy Chancellor's staff also continued to work with ETS to prepare a proposal on testing and selection, examining questions of what exams should be used, how to validate them, and so forth.

It should also be noted that toward the end of their report preparations, one staff member from the Deputy Chancellor's office got a telegram from Sam

²⁹ New York Post, April 11, 1977.

Husk, Executive Director of the Council of Great City Schools, who suggested he contact a firm in Washington, Stepe and Johnson, who were involved in Title VI and IX cases. From this, the staff member found a case in Romeo, Michigan, in which the plaintiffs had said that the OCR had no right to investigate Title IX and VI violations in terms of employment practices. The same day the Board of Education sent their report to OCR, the judge in the Romeo³⁰ case decided in favor of the plaintiffs (the school system). He felt that this indicated OCR had no right to investigate New York City and to require New York City to change its policies based on the investigation. Even in light of these arguments against negotiating with OCR, the Board of Education cooperated with OCR, while not agreeing with OCR's findings.

Other Problems at the Board of Education

There were several other activities involving the Board of Education while the response to OCR was being prepared. The Levittown³¹ case, involving school finance in New York State was wrapping up. New York City was a plaintiff in that case. The Deputy Chancellor's office was also investigating a scandal involving the school system's custodial staff. During April, the Deputy Chancellor decided to leave the Board of Education for a job at the Russell Sage Foundation. When he left in August, he took much of his staff with him.

The Board had other administrative problems. In June, Mayor Beame held hearings on the reorganization of the Board of Education. With the coming mayoral elections, there was a great deal of discussion over the structure and accountability of the Board of Education and the school system.

³⁰ Romeo Community School District v. U.S. Department of Health, Education, and Welfare. 438 F. Supp. 1021,

³¹ Board of Education, Levittown Union Free School District v. Ewald B. Nyquist, Commissioner of Education (Supreme Court, N.Y. State Index No. 8208/74).

Chapter 7

LETTER TWO

After Letter One came out, the OCR Review Team continued to work on Letter Two. This second letter was put together from November 1976 to January 1977. Although more staff were used on this task than on the first letter, it was nevertheless a very rushed and difficult job. Staff members have mentioned in retrospect that there were many things that should have been done but that they did not have time to do. Letter Two had to come out at this time, in part because Martin Gerry was leaving OCR because of change in administration and wanted to have the study completed before the new administration took over, and in part because the court order in the Brown case demanded that this deadline be met.

According to one OCR staff member, the final results had been envisioned from the beginning, although it had taken four years to fit all the pieces together. The original format was followed as the final letter was prepared. As a Review Team member explained later, Letter Two was designed merely to identify areas of discrimination; their plan was to analyze each one of these issues in more depth during the next several months. By June, all the issues would be analyzed and the Review would be totally finished at that time.

The actual data analysis for the second letter, the draft, and final approval of the letter were accomplished during a two-week period just before the letter came out. This left very little time for complete data analysis, review of data, and examination of alternative explanations for the findings. Thus they were able to do only initial analyses that might show whether there was going to be a problem in a particular area.

OCR had collected over 800,000 sheets of new data on the New York City schools. There were approximately 2,000 categories of data that were arranged in a hierarchical structure. Everything about the city could be totalled for city-wide information by district, school, grade, or classroom.

About 180 analyses were done on the original issues; some analyses clearly showed that there were no civil rights violations. An example of this case is the analysis done with the age of buildings as a factor. There was no correlation between this factor and the race of students, so this issue was dropped from the report. Another analysis that was not statistically significant correlated the location of day care and Headstart programs with race. All the issues that did show correlations went into the letter. Almost all the analyses had as their basis the racial/ethnic composition of the students in some type of setting (either classroom, grade, or school). This was then correlated with other things such as disciplinary actions taken, or if the student went from junior high school to high school.

In examining ability grouping plans, the Review Team was limited to judging only the distribution of minority students in classes, and could not consider the quality of the programs. They judged a program according to what a random distribution of minority students would be, and compared this with the actual distribution of minority students in classes of a school.

While the second letter was being drawn up, the regulations for nondiscrimination on the basis of handicap (the Section 504 regulations) were still being developed. OCR could not evaluate services to handicapped children at this time, although they knew that in the near future

this area along with race and sex would be added to their responsibilities.

Letter Two stated that other research on the issues was underway. One of the issues was zoning and attendance lines. These issues were never examined, however. The final version of Letter Two was drafted by Martin Garry, Peter Levine, Barbara Walker (Assistant Director of Regional Office II), and John Wodatch; small teams worked on various parts of the letter. Staff members were flown to Washington from New York City to work on the letter.

The following is a summary of the issues of Letter Two sent to the Board of Education of the City of New York, on January 18, 1977, from the Director of the Office for Civil Rights. A plan was requested to be submitted within 60 days that would remedy and correct any discriminatory action. The findings are as follows:

- Denial of equal educational resources — It was concluded that the New York City schools deny minority students equal educational opportunities by providing less financial support for their education, by allocating less money per student for instructional services at the high school level, by providing poorer and more limited facilities and educational materials, by providing minority students a more limited curriculum and by diverting Federal funds to other uses.
- Denial of meaningful education services — based on Brown v. Board of Education, 347 U.S. 483 (1954), Keyes v. School District No. 1, 413 U.S. 189 (1973), and the Policies on Elementary and Secondary School Compliance with Title VI (March, 1968).

This denial occurred in the following areas:

- Segregated instructional settings — OCR did not find a compelling education justification for this; the students of lower ability groups were not provided with different instructional methods or techniques, and often were not offered teachers with more experience or higher qualifications. They also found that minority children are overenrolled in classes for emotionally handicapped, mentally handicapped, and educable mentally retarded. In contrast, minority students are dramatically underrepresented in special progress classes. (OCR at this time could not draw conclusions on discriminatory practices in terms of mentally retarded or handicapped students, pending the issuance of final regulations to implement Section 504 of the Rehabilitation Act of 1973.)

- Denial of educational opportunity through language barriers — based on Lau v. Nichols, 414 U.S. 563 (1974), and ASPIRA v. Board of Education, 72 Civ. 4002 (S.D.N.Y. 1974). The school system denies educational opportunities to minority students in the elementary and junior schools through the exclusion of non-English-speaking students from full access to the instructional programs. The school system has failed to identify large number of Spanish speaking, Greek-speaking, Italian-speaking, Asian language, and other non-English-speaking students.
- Restriction of educational alternatives in secondary programs— based on 45 CFR 80.3 (b), as well as 86.21, .31, .35. The school system excludes minority and female students from certain academic and vocational programs. OCR concluded that the provision of inadequate guidance and counseling services (higher student/counselor ratio for minority than for non-minority schools) contributes to this existing assignment pattern. The guidance programs differ from non-minority to minority schools. Guidance programs in predominately non-minority schools show a greater emphasis on career and academic counseling. In addition, they found that the predominately non-minority junior high schools had more extensive parental involvement programs than the predominately minority schools did. Female students, they found, are channeled to sex stereotyped courses of study and are underenrolled in advanced math classes. Minority and female students are under-represented in the special admissions academic high schools. 85% of the vocational schools are sex segregated.
- Discriminatory discipline practice — based on an application of 45 CFR 80.3 (b). The OCR finds that disproportionately large numbers of minority students are being kept out of school as a disciplinary measure more frequently and for longer periods of time than are non-minority students.

As with Letter One, Gerry offered technical assistance to the Board of Education as they were formulating a voluntary compliance plan.

When Letter Two was publicly released on January 18, 1977, at a news conference in New York City, Gerry still did not know when he would be removed from office, although a new Democratic administration was about to take office. According to The New York Times, Gerry ordered the

New York City Board of Education to submit a plan within 60 days to correct abuses and prevent further acts of discrimination, as outlined in Letter Two. The deadline for the Board's response to Letter One was also extended to March 18 at this time. Gerry explained at this news conference that,

Should the system fail to submit acceptable plans, the government would act to impose sanctions. These sanctions would include, under extreme circumstances, the loss of all or part of the deferral aid the system receives — amounting to a total of \$200 million a year — but Mr Gerry said that it was unlikely that this would occur.¹

The Chancellor had been informed personally by Gerry on January 17 that the letter was coming. Letter Two was officially presented to Anker only ten minutes before the January 18 press conference, however. The purpose of this letter, as an OCR staff member later explained, was to have the Board of Education re-examine their policies in particular areas to correct problems of discrimination. OCR's role would be to monitor these changes, although OCR would be unable to specify what changes the Board of Education should make. The OCR staff realized that many feared the letters of findings implied setting quotas to correct discriminatory circumstances in hiring and staffing minority persons. This however, was not in OCR's range of enforcement powers.

Members of the administrative staff at the central Board felt that OCR was acting politically in the way Letter Two was presented to the Board of Education. Some observers felt that Gerry in particular had political motives in not sharing the findings of Letter Two with the Chancellor before making the letter public. OCR staff felt that it

¹ New York Times, January 18, 1977

would have been just as political if OCR had shared the information with the Chancellor before releasing the letter. Anker reacted strongly both to the method of presentation and to the content of the letter:

Irving Anker, the City's School Chancellor, held a news conference to accuse Mr. Gerry of "headline hunting" and of treating the school system unfairly.

"I find that the report is filled with the most egregious sophomoric errors," the usually softspoken Chancellor said.²

At the Board of Education, the Chancellor again names a special committee to handle the Board's response to the letter, placing his special assistant, Charles Shonhaut, in charge. From the very beginning, this committee had difficulty responding to the letter because of ambiguity and of questions about the analyses done.

Martin Gerry stepped down from office on January 19, 1977, at the request of the incoming Carter Administration. Al Hamlin was made acting director of OCR. After Gerry left OCR, however, no new data analysis was done on the data for Letter Two, although by many accounts more was needed. No one was put in charge of the Review, nor did anyone at OCR know what should be done next.

In February, OCR staff met with the Board of Education to explain the sources of the data used in Letter Two. Chancellor Anker, Charles Shonhaut, Anthony Polmeni, Elizabeth Cagan, and representatives from the Office of High Schools attended this meeting. The community school districts were very angry with OCR for violating an agreement over the data used for Letter Two. OCR had agreed that they would not release any data without allowing the community school districts to review the findings first. The community school districts were even angrier because the OCR Review Team had looked at individual student records. Shonhaut tried to get the data from OCR but was unsuccessful.

²New York Times, January 18, 1977.

As a result of the February meeting, Karen McKenzie and Amy Lewis went over Letter Two paragraph by paragraph, documenting each violation. This documentation was sent to the Board in late April by Al Hamlin. This annotation of the January letter showed exactly what analyses had been done for each paragraph of the letter. This annotation had been done with the idea that the Board could then begin to start working on a plan to remedy the problems identified in the January 18 letter. Such an annotation had not been done for Letter One because the issues were simpler and the Board of Education had said they understood what was in that letter, which was not the case with Letter Two.

The Board of Education did not have to respond to Letter Two, however. In spring 1977 it was "withdrawn" by OCR. This withdrawal appeared as a political maneuver as observed by Board of Education officials and OCR staff persons, because the letter was never formally withdrawn. The reasons for withdrawal were varied; in part, it was done because of internal problems within the OCR staff, and in part because of problems with the letter itself.

Interest groups became involved with Letter Two in part because OCR staff sought them out. The various interest groups were concerned with rumors about the "strength" of the second letter and the data underlying the conclusions. These concerns were also felt within OCR. Various advocacy agencies began receiving frantic calls from OCR staff members, expressing concern about the fact that the old staff was afraid the new staff would not support the letter for political reasons, and that there was internal dissention over the methodology behind the letter.

Part of the internal dissention arose because Martin Gerry was no longer director and had not built up a good organizational structure during his administration to carry on in his absence. Gerry had not

consulted with his staff during this course of the study; rather, he had operated unilaterally. Thus much of the old staff had not been behind him and the project. The other problem was political; Gerry was a Republican but the new administration was Democratic, which meant a shift in how the two letters would be handled, because the change in federal administrations meant changes in policy stances.

The Children's Defense Fund (CDF), among other agencies, had been aware of the internal problems associated with Letter Two for a while. This second letter was even more disturbing than the first letter had been to the interest groups because they found the second letter to be technically weaker than the first and were afraid it would not hold up under the political and possible legal pressure it might face. Even before the second letter was released, there had been rumors that something was wrong with the data. Greg Jones* (pseudonym) of CDF had gotten a call from an OCR staff member shortly before Letter Two was written, asking technical questions about the data while being very secretive about the situation. From the questions asked of him, Jones concluded that there was a tremendous problem with the New York City Review data.

Jones* also got a call from a top administrator at OCR, who was sorry about the letter being written and wanted to consult with Greg about it. He asked if CDF was leaning on Martin Gerry to get the letter out. He also wanted to borrow Jones for a couple of weeks to review the data analysis. The caller did not have any data available, however, and Jones'* time was committed at CDF.

When Letter Two did come out, Jones found parts of the data to be a problem. There was a lack of alternative explanations for the findings, a lack of patterns of extreme cases, and suggestions of

faulty data; on the whole, the "proof" lacked legal authority.

These concerns were also felt within OCR. These problems continued to grow. Early in Spring 1977, Jones was consulted again for advice on standards of index construction. In April, OCR borrowed Jones, but only after discussions within the Children's Defense Fund about whether he should go.

Several other consultants were brought in to work on a review of Letter Two, including two lawyers from Boston, Phil Burling and Nick Flannery.⁴ Dave Tatel knew Flannery, who was a well known civil rights lawyer; Burling was one of Flannery's associates in their Boston law firm. These lawyers later became involved in the negotiations over Letter One, but they were originally called in to review Letter Two.

Greg Jones³ attended three meetings at OCR; unlike Flannery, however, he was not a paid consultant.³ Flannery examined the standards of proof applicable to the issues in Letter Two; Jones looked at the absence of alternative explanations from a statistical standpoint, especially in the discipline case, and at proof standards from a technical perspective. Amy Lewis⁴ chaired these meetings. She had been particularly concerned with the discipline issues during the preparation of Letter Two. This later proved to be a weaker case than it appeared, however. One of OCR's technical staff administrators

³It is CDF's policy not to take any Federal money,

⁴Flannery had previously been a lawyer in the Justice Department,

was in attendance, serving as a data technician and keeping track of the administrative framework in which they were working. Lawyers from OCR and from the Justice Department also attended the second and third meetings.

It was felt within OCR at this time that OCR should not contract for more data analysis because HEW was being investigated for their use of "sole sourcing" on outside contracts. There was an additional problem because the data sources used by the outside contractors for the analyses had never been fully documented from the raw data through processing to analysis. For this reason, Greg Jones* doubted that these data could be used in court.

During this review of Letter Two, the letter was withdrawn. A new team from the Chicago Regional Office was brought in to do the re-analysis. Greg Jones* was then dropped as a consultant.

Shortly after Letter One went out, the advocacy groups began to act. PEA, for instance, sent a series of pro-compliance letters to the Board of Education, to the newspapers, and finally to Maritn Gerry, voicing its opinion on what needed to be done. Various OCR staff members contacted the interest groups in New York City to rally support, in part because of their concern over the possibility that Letter Two would be withdrawn.

Many of the civil rights advocacy groups strongly supported OCR on Letter Two. Letters were sent to every Congressman, State Senator, and City Councilman from Advocates for Children, requesting their support. Nancy Cornell* of Advocates for Children, in conjunction with the Women's City club, circulated Letter Two to

these various politicians. She wrote to Congressman Ted Weiss, for example, to ask him to request 100 copies of the letter from OCR because OCR had not sent copies to Community School Board members, parents' groups, the City Council, or the State legislature. Some congressmen did follow-up on these requests, but generally this effort was not very successful.⁵

Some of the advocacy agencies' representatives kept in contact with the members of the Review Team. Personal notes on phone calls suggest that Nancy Cornell*and Amy Lewis*talked in early February 1977 about possible delays of Letter Two (for two months) and Letter One (for two weeks). They also discussed OCR's plans for a possible new contract to Delta for further data analysis. Amy explained to Mary that the ESAA (Emergency School Assistance Act) money would be withheld from New York City in September 1977 if a plan to resolve the civil rights violations cited in Letters One and Two was not acceptable.

Although there was a great deal of uncertainty over Letter Two, both its merits and OCR's own support of the findings, the advocacy agencies continued to support it. For instance, in March 1977 Nancy Cornell sent a letter to Chancellor Auker enclosing a proposal for resolving the issues raised by the January 18 letter. In the end, however, the agencies were not able to save this second letter. It was dropped that spring and the investigation was re-opened.

5

In retrospect, Advocates for Children found this method of gaining political support to be less productive than if they had had a straight political contact, as other agencies did.

Chapter 8

INTERIM ACTIVITIES
BETWEEN THE LETTERS AND THE RESOLUTIONS

During Spring 1977, David Tatel from the Lawyer's Committee for Civil Rights Under Law was appointed the new Director of the Office for Civil Rights. Cynthia Brown and Norman Chachkin came with him from the Lawyers' Committee; Brown had previously worked at the Children's Defense Fund. They served as two of Tatel's top administrators.

OCR received the Board of Education's response to Letter One in April. It was reviewed internally, and a memorandum was sent to the Board of Education in July. Concurrently, the Board of Education had to participate in show-cause hearings on ESAA eligibility.

OCR was responsible for reviewing ESAA applications and determining New York City's eligibility for funds. Several letters were prepared for New York City about eligibility; these letters dealt with the question of comparability as well as teacher segregation and bilingual education. The issue of comparability was later dropped as part of the ESAA review criteria.

Throughout the spring, the various interest groups tried to keep in touch with activities related to Letters One and Two. There were also instances when OCR contacted the interest groups for consultation, background information, and so forth.

In one instance, Tatel asked PEA to review the Board of Education's response to Letter One. The Rubinos lawyers, Richard Larson, Art Eisenberg, and Carol Ziegler, wrote letters and set up a meeting in Washington with

Tatel. (These lawyers had known of Tatel through his civil rights activities, and Larson had known him personally.) At the meeting, there were new staff from OCR who had to be educated about the activities surrounding the New York City Review. Peter Levine was put in charge of the "ESAA question," and new lawyers were assigned to the Title VI issues. Rubinos lawyers brought a lengthy series of stipulations from the Rubinos case (including 150 items about the development of licensing exams by the Board of Examiners), as well as a great deal of statistical information to brief the OCR staff. Even by the time of the final negotiations between the Board of Education and OCR, however, Carol Ziegler continued to doubt whether new OCR staff had a sufficient mastery of the New York City situation. The Rubinos lawyers also felt that the OCR staff had underestimated the determination of the Board of Education and Board of Examiners lawyers.

The advocacy agencies were also undergoing changes. One of the Rubinos lawyers had planned to leave New York City for a position at the Lawyers' Committee. In preparing to leave, he informed the other lawyers of a history of their activities so far in maintaining an involvement in the OCR review of New York City schools. In addition, he included an explanation of the relationship of this OCR review and the timetable for OCR established under the Brown v. Weinberger. Up until now, OCR had been able to receive several extensions. The services and employment issues had been treated separately by OCR; they had received a four month extension on the educational services issue and none for the employment issue.

As Karen McKenzie later observed, one of OCR's major problems during and after the study was that they were trying to do too much without a well-trained, well-organized staff. Martin Gerry had often been criticized for using only a small staff on this study, which aggravated relations within OCR.

After Gerry left OCR, no one was put in charge of the Review for several months. Charles Snow was finally put in charge of all the Big City Reviews. During the time Al Hamlin was Acting Director, however, little was done on the New York City Review beyond Karen McKenzie's and Amy Lewis's annotated documentation of Letter Two.

After Martin Gerry left OCR, the Review Team went through a difficult transition at OCR. Some Review Team members were shuttled around to different, unrelated positions within OCR and consulted on the "case" only in dire circumstances. Gradually, many of these people left OCR to work elsewhere.

For those outside OCR who were involved with the Review, it became increasingly difficult to develop lines of communications and to obtain the cooperation from OCR. One example is the case of the Justice Department lawyer who had difficulty getting the NYC schools data from OCR to defend OCR in one of their own cases. Later, he also had to hire his own statistician to assist in the analysis for OCR would not assist, though it was the agency's defense. This basic problem continued for months after OCR's reorganization.

When OCR changed directors, the agency went through a period of reorganization. (In fact, every time a new director was appointed at OCR, the agency went through some form of reorganization.) On this occasion, the change began with the outflux of staff members who had worked closely with Gerry on the Review. Next came the appointment

of staff to fill many of the top administrative positions. Then the agency was reorganized physically; offices were reassigned from the first floor to the fourth and fifth floors of the administrative building. At first, staff members were given the chance to select their new slots. This arrangement did not function smoothly, however, and people were assigned to jobs. Many staff members were unhappy about their lack of input into the direction the new administration was taking and into selecting their own jobs. This affected the morale of the entire office.

In October 1977, one of the new administrators who had come with Tatel from the Lawyers' Committee resigned because he found the job at OCR to be too frustrating and time-consuming. He returned to the Lawyers' Committee "enlightened and disillusioned," as he later described in interviews. Later that fall, the last core Review Team member, Karen McKenzie⁴, left OCR to work for an independent consulting firm. She had been the key source on the background to the case. She felt that now much of the information on the study would go unused because she was the only one who knew about it. Karen McKenzie had been consulted while she was still at OCR, but the OCR administrators did not assign her to work on the Review, nor did they make work conditions tolerable for her. For instance, she went for a long time without a permanent office or phone, which made it very difficult for other people to get in touch with her. When the Board of Education submitted its first response to OCR, however, McKenzie⁴ drafted OCR's first reply, which later became the memorandum that went to the Board in July. Later, she was called to testify at the show cause hearings over ESAA funding.

She also was used to advise the Chicago team, working a great deal with one member of that team in particular. During the summer, she was sent to New York City to participate in the negotiations with New York City.

After Letter One was released in late 1976, a flurry of political activity ensued in New York City. This activity involved pressure on OCR from the Board of Education, Albert Shanker of the UFT, Senator Javits, and Senator Moynihan, and centered on the possibility that Federal funds might be withdrawn and on other actions OCR might take. For instance, a member of Javits' staff visited OCR in February 1977, although OCR staff did not claim that any pressure had been put on them.

The due date for the Board of Education's response to Letter One was changed several times. Originally, the response was due March 18; this was changed to April 1, and then changed again to the middle of April. According to the regulations and the Sirica order, a school district has 90 days in which to meet voluntary compliance or to reach a settlement with OCR. If this does not happen, OCR must move for a hearing, at which they could defer further spending of Federal funds in that district. By changing the deadline, OCR was in violation of both the Adams order and the Sirica order.

Throughout Spring 1977, Nancy Cornell* of Advocates for Children kept in touch with Amy Lewis* at OCR. The interest groups were concerned about the Adams case and the deadlines it set. They wanted to be sure OCR did not back off. The interest groups were also becoming increasingly aware that politicians were getting involved in determining how this situation would be handled. They

were concerned about HEW Secretary Califano's stance on civil rights enforcement and the degree to which he would support certain issues but not others. There was a great deal of speculation about how this would influence negotiations with New York City. The groups were also concerned with Senator Javits' increasing involvement as an intervenor between the Board of Education and OCR. On March 3, 1977, the Public Education Association (PEA) sent a mailgram to Javits' New York City office to say they knew he was meeting with the Board of Education. They feared that the Board of Education would try to persuade the government to repudiate the report. They therefore urged Javits to support the OCR report and to meet with them to discuss it.¹

Javits became even more involved by setting up meetings between OCR and the Board of Education during the spring.² His involvement was seen by many special interest groups and interested individuals as an attempt to balance himself politically because he was a Republican in a Democratic administration. By now, Javits also had a great deal of clout with HEW; he was the ranking minority member of the Senate Education and Labor Committee, which handles HEW education legislation.

¹Efforts to confirm Javits' involvement, even after the fact, led to a dead end. His staff would not acknowledge any involvement, correspondence, etc.

²There were many references in interviews to "black market" memos of these meetings.

Mary Williams in particular kept in touch with various people on events related to the two letters. She found out about the time delays from a lawyer at the firm that was handling the delay request, and had agreed not to oppose it.

In early April, Amy Lewis*called Nancy Cornell*to complain that Peter Levine, an OCR lawyer, had written a memo to Lloyd Henderson, the head of Elementary and Secondary Education at OCR, complaining that "some" OCR staff people were talking directly to civil rights agencies and that David Thompson (NAACP) had been the source of this information. Nancy Cornell*contacted Thompson to verify this. He said he had given no names to Levine and that he had told him he knew of none. Later that same day, Cornell* found out from Amy Lewis* that ESAA funding for the New York City schools was in question, and that Fred Choffi, Ted Johnson, and Peter Levine (all from OCR) had met with the Board of Education about this issue. Levine, it appeared, was trying to prevent some of the districts from losing their ESAA funding.

The various advocacy agencies tried using pressure tactics to affect the progress of negotiations by rallying political support, such as through letters to Congressman Rangel and Joseph Pecheco of Rebuild Harlem Committee. They communicated regularly with each other; Larson of NYCLU sent letters to the other Rubinos lawyers about HEW/OCR activities to keep them updated. For instance, in March he let them know the Board of Education had been given a two-week extension. He also noted that there was some internal dispute at the Board of Education over the findings of the letter. He also reported that Peter Levine of OCR still denied that Javits was

exerting pressure. Finally, he suggested that the New York Chapter of the ACLU demand a meeting with OCR.

Lawyers and representatives from the interest groups (including the Rubinos lawyers) had maintained contact with a lawyer from the Brown v. Weinberger case; they know about the time-line requirements in this case and its relationship with the NYC Review. The delays by the Board of Education contributed to OCR's delay in closing the case, although the time lines established were very explicit about how much time should be taken to end an investigation. The Rubinos lawyers were also concerned about OCR's reply to Board of Education's April 22 response to Letter One. They tried to find out what OCR's new policy would be, given the way OCR's new director, Tatel was handling the NYC Review. He assured them that OCR would enforce civil rights policies according to their (OCR's) area of responsibilities.

During Summer 1977, the various interested agencies tried to keep up the pressure through groups in New York City and in Washington, D.C. They were also assisting the Chicago team in their research for the revision of Letter Two and speaking at OMB on the use of data collection forms. Mary Williams contacted various OCR staff to find out what was going on. She did not have much luck, however, because she was unable to identify the chain of command. While attending a conference in Washington on school discipline (organized by the American Friends Service Committee), she ran into some of the OCR people she had been unable to contact and had the opportunity to challenge them on the way OCR dealt with the New York City advocacy groups. In the end, however, she learned that the only way to get a response from OCR staff was to send a letter by certified mail, which they would have to acknowledge. Otherwise, the interest groups had little to do but watch and wait for the results and to work with the Chicago Team on their new data collection efforts.

Chapter 9

RESOLUTION OF THE ISSUES

In July 1977 the New York City Board of Education began to negotiate with OCR on the issue of federal funding. Tatel announced publicly in July that he would not approve the release of \$24 million in federal funds for the Central Board and \$16.9 million for 18 Community School Boards because of discrimination against minority students and teachers. He requested a more specific plan to correct discriminatory hiring procedures than the plan submitted by the Board in April, although he acknowledged that the submitted plan represented a good faith effort.

The major problem was New York City's application for ESAA (Emergency School Aid Act) funds for programs to aid "minority pupils who do not speak English." The Central Board was ineligible because minority students had not received "equal educational services" and minority teachers were discriminated against in hiring and assignments. Finally, according to an OCR spokesman, "the community boards were ineligible because they did not deliver adequate services to students having difficulty with English." Some of these issues had arisen in Letter One, some in Letter Two (which had been recalled). Tatel was quoted as stating that the Board's plan for minority hiring had been a good faith effort, but more information on a plan for changes was needed.

OCR handled the resolution of these issues in two ways. First, Herman Goldberg, Associate Commissioner for Equal Educational Opportunity Programs, U.S. Office of Education, held a series of show cause hearings for the Central and the Community School Boards during the summer (1977)

¹ New York Post, July 6, 1977.

either to defend themselves or to seek waivers. Second, negotiations over a plan for handling the issues raised in Letter One had begun between OCR and the Board of Education.

The New York Times interviewed local school personnel about the situation. A spokesperson from the UFT blamed the discrepancies in hiring minority teachers on the fact that the city colleges had not until recently graduate minority teachers, thereby implying that the City was using what meager resources were available. The community spokesperson from District 5 (one of those in violation) said that his district was "guiltless" and would appeal the decision to withhold funds.²

The newspapers had also played up the internal problems at the Board of Education. The Post discussed alleged mismanagement in the central administration.³ Stephen Aiello, the new president of the Board, stated that he was concerned about scandals rocking the school bureaucracy. There were also rumors that Anker would be rehired as Chancellor. Aiello merely said that, in his new post, he would review the performance of "all top school executives."

ESAA Funding

Herman Goldberg sent letters to the various Community School Boards stating that they were in violation of civil rights laws and therefore ineligible for ESAA funding.⁴ Some districts were cited only for not providing bilingual services; other districts were also cited for having a racial imbalance among

² New York Times, October 24, 1977.

³ New York Post, July 6, 1977.

⁴ Findings of fact are, legally, determine of fact after a hearing in which both sides have been presented One and Two. The OCR letters were not letters of findings but a preliminary statement resulting from a

faculty. This problem could only be corrected through redistribution of staff within the district. Under the agreement of the Memorandum of Understanding, the racial composition of a school's staff must approximate that of the entire district. There can be no fewer than 75% of the proportion of minority teachers for the whole district, nor more than 125% within each school. If minority teachers represent only 4% of the staff in a school district, a school must have between 3% and 5% minority teachers.

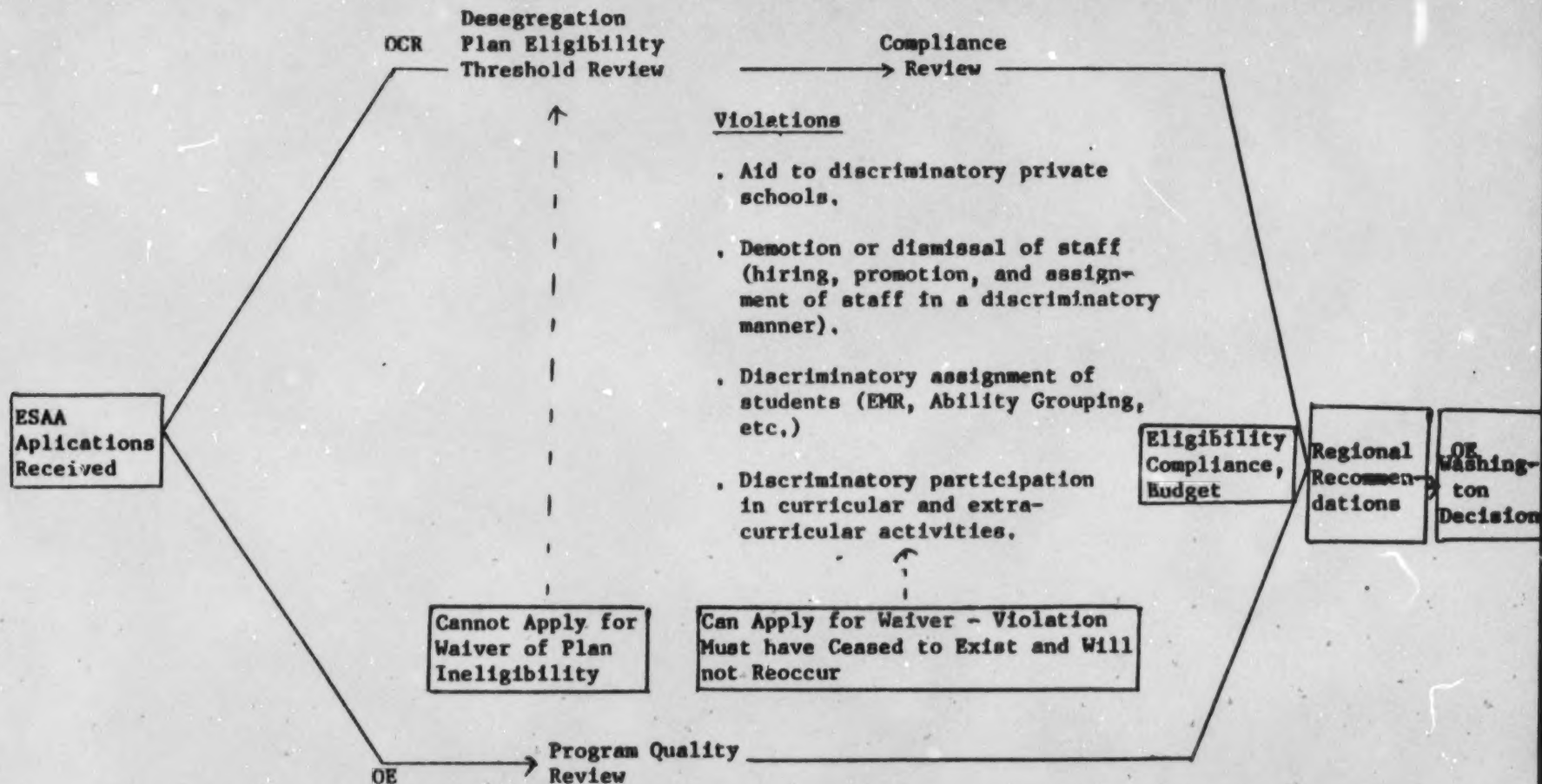
The hearings on these violations were held in Washington. Board of Education representatives went to Washington to testify for the Community School Districts and for the Central Board. Some districts were able to obtain revocations because they were able to demonstrate compliance. Other districts had to apply for waivers because their plans were to include measures describing how they planned to integrate their staffs or to provide bilingual education.

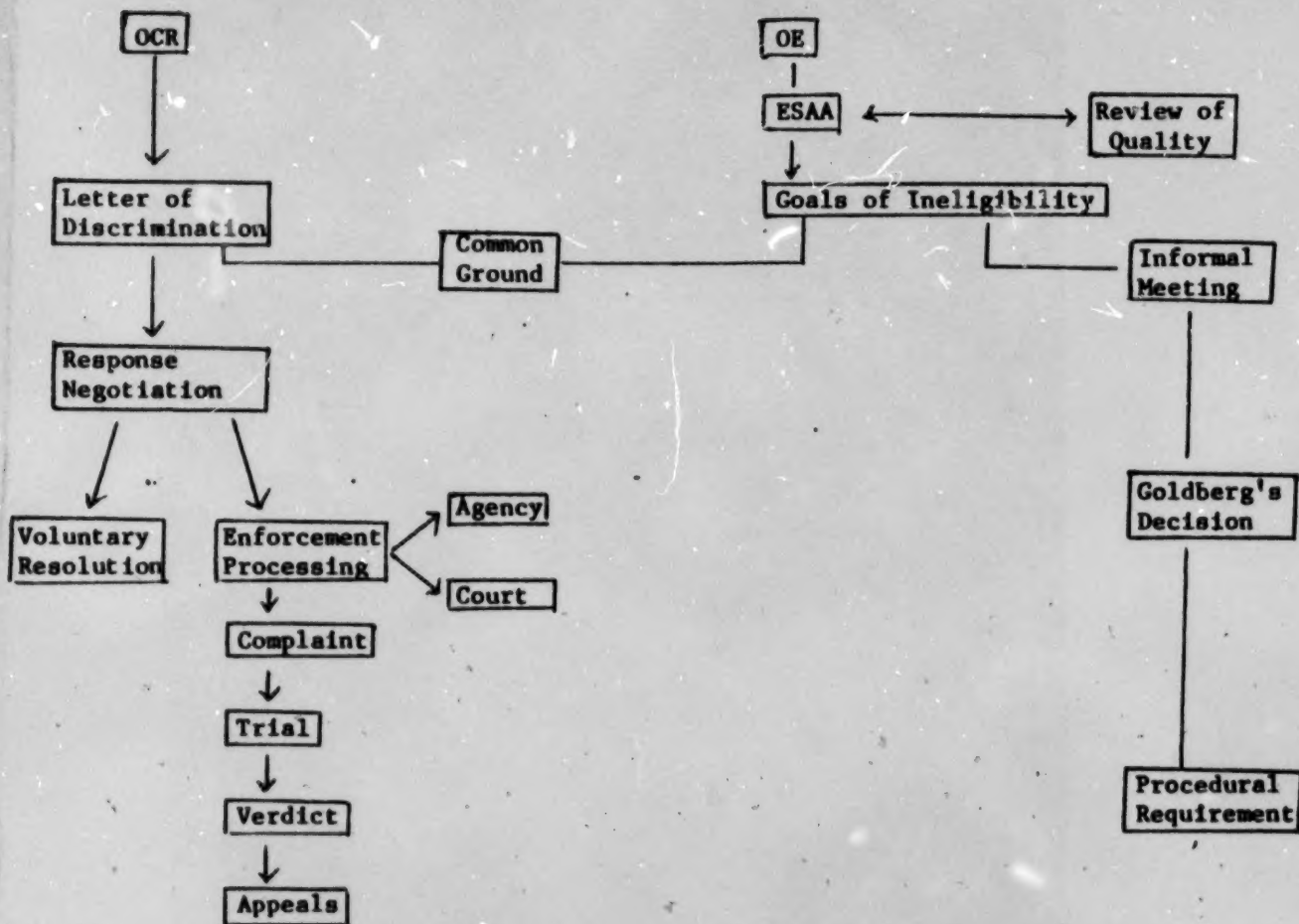
unilateral investigation. Goldberg therefore had no legal authority to use these letters as the basis for his decisions on ESAA ineligibility because he was drawing conclusions without benefit of a hearing, which is violation of due process.

ESAA hearings are not meant to determine discrimination but simply ineligibility. According to policy, if OCR finds a district in violation, then that district is to receive no funds. The district must be given findings of fact that alleged discrimination activities occurred. These findings of fact become the basis for a decision on ESAA eligibility.

There is some confusion over who is responsible for determining ESAA ineligibility on the grounds of civil rights noncompliance. In addition, it is still unclear what happens to a school district in violation of Title VI, pending resolution of these issues. Is the district then ineligible for ESAA grants pending resolution of these violations or is the district only ineligible after findings of fact have been established?

According to Goldberg, Figure 1 is an illustration of the process to be used for ESAA applications and the determination of eligibility. One difficulty arises when OCR and OE cover the same area. OCR and OE have two very different processes for handling discrimination and subsequent ineligibility. (See Figure 2)





To help speed up this process, the OCR staff worked to develop a general plan for all the districts. Some districts sought waivers on their own, but other districts joined in with the Board of Education, signing off on one comprehensive plan. Region II staff occasionally went to Washington to work on this comprehensive plan; at other times the Washington staff went to New York City to meet with Board of Education staff or with staff from the Bilingual Education General Assistance Center at Columbia University, who advised them on a plan to correct the bilingual violations. Most of the districts that had developed their own waiver plans were encouraged to make use of the General Assistance Center.

In handling these cases, Goldberg changed his policy; he decided that it would be better if the Central Board negotiated with OCR to come up with a plan for all Community School Districts to correct the bilingual education violations. All other determinations were held up while this plan was being negotiated. This Central Board plan was not completed and approved until September 15, 1977.

By late Summer 1977, a joint plan was devised that the community districts signed off on. The plan then had to go through OCR/HEW channels to be approved, a process that takes approximately two weeks. This delayed approval of Federal funding for the New York City schools through September. The school districts with revocations⁵ were then entitled to receive funds,

⁵Revocation -- According to the ESAA review process when a district has been found ineligible for funding, the district has the opportunity to show cause why determination of ineligibility should be revoked and its application considered for funding. This provides a district with an opportunity to demonstrate why it should not have been found ineligible. A revocation, then, is a cancellation of previously determined ineligibility as concluded from such a hearing.

but in many cases they were not given notice of this until some time in September. Thus, although they should have been funded as of September 1, they did not actually receive funds until much later. These districts also could not use the funds until they were officially notified. This created problems for some districts because they charged Federal programs off to tax levy with the erroneous belief that they could use the Federal funds to balance it off later.

Of those districts that submitted waivers, many did not get approval for funding until September 15 and were not eligible until September 28. This delay in approval had a disruptive effect on many of the school programs that were dependent on this funding because school had begun in early September. Not all the Community School Districts were able to get the funding they had requested. During the time the Community School Districts and the Central Board of Education were seeking ESAA funding, OCR and the Board of Education had been in negotiations over the civil rights violations raised in Letter One. Through these negotiations, the two agencies were able to resolve these issues at least partially. This plan included a time line for resolving the problem of teacher assignment which was holding up the ESAA funding for the Central Board and some of the similarly situated Community School Districts. Since this time line extended resolution of this problem until 1980, ESAA funding necessarily could not be approved until then. According to ESAA regulations, all evidence of civil rights violations found must "cease and desist to occur."

Thus, the Central Board of Education and District 11 were not able to get ESAA waivers for Fall 1977 because they did not have the teacher assignment issue resolved. Apparently, District 11 had a problem with their statistics, but they did not want to move their teachers. They based their argument on the fact that they were able to show that none

of the assignments criticized by OCR had been made after the June 1972 date applicable to ESAA eligibility. The Board of Education and several districts lost funding.

Negotiations Between OCR and the Board

CETA (Comprehensive Employment and Training Act) funds were also jeopardized because of Title VI violations. The City school system needed these funds to correct some of these violations, however. Over \$17 million in ESAA monies were at stake, and over \$12 million in CETA monies. Total Federal funding to the Board of Education came to over \$365 million annually, all of which could ultimately be in jeopardy.

Preliminary negotiations between OCR and the Board of Education on a plan to correct the violations began in May 1977. Formal negotiations got under way in July. OCR hired two outside lawyers for these negotiations, including Nick Flannery. OCR staff, including those most knowledgeable about Letter One, were also present at these negotiations. Board of Education members stayed away from the negotiations, relying on Frank Arricale (Director of the Division of Personnel) and Chuck Schoenhaut (Special Assistant to the Chancellor) to do the negotiating. The UFT was represented during some of the sessions, and several Board of Education lawyers were also present. A total of eight people were involved in the actual negotiations: Schoenhaut, Mike Rosen, Ron Walter, David Tatel, Karen McKenzie, Ted Johnson, Peter Levin, and Nick Flannery,⁶ from the consulting

⁶ Flannery chaired the negotiation sessions for OCR; he was described by the OCR people as diplomatic, very low-keyed, and extremely credible. Board of Education representatives, however, felt that these outside consultants were biased, that they started with the opinion that the Board of

law firm.⁷

During July and August 1977, there were between 10 and 20 sessions involving the staff on this case, and about 10 sessions with the top negotiators. Many of the staff meetings were used to clarify data and to work out portions of the agreement; sometimes the staff experts worked things out together, sometimes they met with some of top negotiators. All agreements were subject to review by the Chancellor and the Corporation Counsel. The Board of Education opted not to have an administrative hearing on the findings of Letter One because this would have held up funding.

On August 4, while negotiations were still in progress, David Tatel sent a letter to the Board of Education reiterating the findings of the November 9 letter and indicating that the Board was still in violation of Title VI. The Title IX issues seemed to have been cleared up and were no longer critical.

Several differences of opinion emerged during the negotiations. First, OCR wanted criterion-related validity⁸ on all Board of Examiners tests. It was difficult Board representatives to disagree with this because to do so made it sound as though the Board of Education was against validity per se. The Board of Education instead wanted content validity,⁹ not criterion-related validity. Criterion-related validity would be possible only if there were criteria for each job. Other problems involved in determining predictive validity

Education discriminates in employment and does not want to deal with issues of integration in its own arena.

⁷Other lawyers from this firm may have been involved in the negotiations, but it is unclear who and at what points. In addition, other OCR lawyers were also involved, such as Stewart Baskin but it is unclear as to whether he attended as a substitute for Tatel or in addition to.

⁸Criterion-related validity: This form of validity is studied by comparing test or scale scores with one or more external variables, or criterias, known or believed to measure the attribute under study. Kerlinger, Fred N. Foundations of Behavioral Research, 2nd ed. New York: Holt, Rinehart and Winston, Inc., 1973, p.459.

⁹Content validity: This form of validity is studied by examining the representativeness or sampling adequacy of the content-the substance, the matter, or the type of a measuring instrument. Ibid., p. 455

were different climates for teaching, different environments, time, different on-the-job training, and different rating systems. The Board of Education and the Board of Examiners therefore wanted to test the basic knowledge and ability a teachers should have to begin teaching -- content validity. If the Board of Education had agreed to use predictive validity, they would have had to abandon their present selection system and find one with predictive validity. The UFT challenged OCR to find a test that had predictive validity for teaching. Fitzgerald of the Board of Examiners also challenged OCR on this point and defended the present system. The issue was finally dropped.

Second, OCR wanted to include all the people who had previously failed the licensing exam to be included in the pool for hiring.¹⁰ This issue was also dropped.

Third, OCR wanted to use quotas and a balancing requirement for the hiring and reassignment of personnel. They also wanted the quotas to be in terms of the labor pool estimates the Board of Education was to do. The language of "quotas" was not included in the final plan, however.

Fourth, OCR wanted to eliminate the method of rank ordering of people based on tests. The Board of Education agreed on this issue, which was also an issue in the Rubinos case.

Finally, the UFT was interested in eliminating the 45% rule¹¹ for hiring and replacing it with a centralized hiring system. This would require changing the State education law; the details of this would be worked out by the Board of Education.

In negotiating a plan, OCR was concerned that the Board of Education

¹⁰ This was also a demand in the Rubinos case. The UFT was aware that OCR had talked with the plaintiffs in the Rubinos case.

¹¹ 45% rule for hiring--This refers to the existence of two different hiring methods as established by the New York State education law, Sections 2573 and,

achieve certain results; the methods for achieving these results were left to the Board of Education to design. OCR's only concern was that these methods be capable of being monitored. In the end, the Board of Education was required to conduct studies on job tests, validation studies, a study of the labor pool, and validation of the Language Assessment Battery tests.

In addition, the plan required a change in the State education law, which at that time required the use of rank-ordered lists and the examination process that was then being used. The Board of Education had tried to change this before, but was blocked by the UFT.

Various interest groups wanted to be part of the negotiating process, but were denied access. At some points, however, OCR staff sought the advice of interest group members as a plan was being developed. Carol Ziegler of PEA recalls that OCR staff members called her to discuss factual points relevant to the

2590-j, which specify that candidates for teaching positions must be selected from dated, rank order lists promulgated for each subject matter license area on the basis of open competitive examinations conducted by the Independent Board of Examiners. In addition, the law authorizes an alternative hiring method whereby candidates may be selected either by being taken "out of rank order" from existing rank order lists or by achieving a minimum score on the National Teachers Examination (NTE). The law further specifies that the alternative method may only be used in selecting teachers for elementary and intermediate/junior high schools scoring in the lower 45th percentile on a comprehensive reading examination administered annually to all pupils under the jurisdiction of Community School Districts. This method was authorized, in part, as a reform in employment practices aimed at improving the representation of minority teachers in the New York school system. (This explanation was taken from Board of Education of the City of New York response to Letter One, April 22, 1971)

Rubinos case. When it was necessary, other units of the Board of Education were brought into the negotiations. For the most part, however, the negotiations were closed sessions.¹²

The Memorandum of Understanding

On September 7, 1977, it was announced that the Board of Education and OCR had signed a Memorandum of Understanding to resolve the civil rights violations raised in Letter One. According to Chancellor Anker, who was interviewed as this new plan was being presented, the plan was based on setting goals and not quotas.¹³ According to the Memorandum between the Board of Education and OCR, the Board agreed to implement an affirmative action plan, containing the following elements, with respect to the employment and assignment of teachers and supervisors in the New York City school system:

- By September 1979, the teachers corps of each district in the system will reflect the racial and ethnic composition of the system's teacher corps, within a range of 5%.
- By September 1980, each individual school will reflect this racial-ethnic composition, within a range of 5%.
- The Board of Education will demonstrate that it has made efforts to overcome the affects of educationally based program exceptions to the first two points, through effective use of mechanisms such as recertification, recruitment, and special assignment of teachers.

¹²

The newspapers kept track of the issues too, interviewing the various sides as the plans were being worked out. When the Memorandum of Understanding was almost ready, and when the question of with-holding expected Federal funds became an issue, the New York Times (July 6, 1977) ran background article. They focused on the amount of money in question, as well as the importance of money in the negotiations that would follow. They had earlier quoted Ira Glasser, Executive Director of the New York Civil Liberties Union, who said that, although the money was causing the layoffs, "we are using the level of money to make the solution more equitable in racial terms," New York Times March 26, 1976.

¹³ New York Times, September 7, 1977.

- The Board of Education will actively support and sponsor legislation at the next legislative session, where necessary, to change the following:
 - All tests will be validated prior to use, except in cases of demonstrable educational necessity. Tests will be validated according to Guidelines for Employee Selection Procedures (41 Fed. Reg. 51734, Nov. 23, 1976).
 - All eligibility lists by license will be merged without regard for dates of examinations.
 - Rank-ordering of those who passed examinations shall be abolished.
 - The Board of Education will make use of affirmative action mechanisms in hiring and assigning teachers.
 - The Board of Education will take steps to ensure fulfillment of the foregoing objectives throughout the system.
- If the legislation is not adopted for the 1978-1979 school year, the Board of Education will seek the appropriate litigation in support of the agreed objectives.
- The Board of Education will perform a qualified labor pool study, by race, ethnicity, and sex (by an independent expert). The Board of Education commits that by September of 1980, the levels of minority participation in teaching and supervisory services will be within a range representative for the racial and ethnic composition of the relevant qualified labor pool.
- All employment decisions for teaching personnel will be subject to adjustments arising from the new legislation or successful litigation pursuant to point number 5.
- The Board of Education commits itself to pursue a program of affirmative action to increase the number of women in the supervisory services.
- Within 120 days after the Memorandum of Understanding, the Board of Education shall submit to the Office for Civil Rights a detailed plan describing the steps and mechanisms to be used in attaining the objectives of this plan. In addition, the Board of Education shall file with the Office for Civil Rights annual reports demonstrating progress toward the interim and final objectives.

In addition, the Memorandum of Understanding ("Memo") included a statement in which the UFT committed itself to support the adoption of legislation, with respect to the provisions of the paragraph number four of the Memo. This was signed by Albert Shanker, president of the UFT, under protest.

Chapter 10

IMPLEMENTING THE MEMO OF UNDERSTANDING

When the New York City schools opened in September 1977, The New York Times ran an article describing the various controversies surrounding the schools. The article noted the legal controversies that would affect "what is being taught, how it is being taught, and who gets the benefits."¹ This would result in part from current Federal legislation, which demonstrated the "extent to which Washington intends to continue using education to promote social gains which may be found in questions Congress faces as it weighs renewal of several major pieces of school legislation."

The New York City schools faced more specific problems. The City's financial crisis was not over, although the situation was improving. The Board of Education had reached an agreement with OCR on hiring and promotion practices toward women and minorities, but the plan would not be fully implemented until September 1980. According to the agreement, the school system was to begin to implement its plan of redistributing minority teachers through the school system. This, however, permitted at least "\$35 million in federal money to flow into the school system — money that was never as essential for the restoration of cuts."² Over 1,300 high school teachers had been laid off; 525 returned as school begun. A few elective courses were being reinstituted in the schools.

¹ New York Times, September 5, 1977.

² New York Times, September 8, 1977.

The Board's Plan

Of the \$35 million in funding to be released to New York City, \$15 million was in CETA funds, which was to be used to rehire 1,200 teachers. The other \$20 million would come from ESAA. It was anticipated that 4,000 of the laid off teachers would be rehired during the coming year.³ 3,500 teachers were rehired during the first few weeks of school, and for the first time were assigned to schools on the basis of race. The minority group teachers were sent to districts where the proportion of black and other minority teachers was less than 10%, and whites were sent to those where the proportion of minority teachers was greater than 20%. This procedure had been devised by the Division of Personnel to carry out the OCR/Board of Education plan. This did not take place without controversy, however.

According to The New York Times, this method of assigning teachers was cautiously endorsed by the UFT and denounced by the American Jewish Congress as a "deplorable and unconstitutional invitation to establish race-conscious teacher quotas."⁴ The Times noted that some teachers and administrators were apprehensive and unhappy with the plan. Arricale theorized that the stir over the plan was a result of a "clash of two liberal doctrines -- the doctrine of integration and the doctrine of the black role model."

Other groups were upset over the way the plan had been arrived at. The lawyer from the NAACP Special Contribution Fund wrote to Stuart Baskin, Assistant Director of OCR, who had participated in the negotiations on the Memo of Understanding.

³ New York Times, August 23, 1977.

⁴ New York Times, September 23, 1977.

I am very troubled about the process utilized to work out the agreement since our clients were not consulted and they were responsible, in significant part, for pressing the matter which was ultimately settled by the agreement.

Understanding your concerns, as expressed to me in our conversation, I am not convinced that the process adequately provided for our clients' concerns.

Congressman Edward Koch, a mayoral candidate, criticized the plan and in turn was criticized by various interest groups. The Deputy Director of the NAACP stated in a letter to Koch:

We are distressed that the public official with liberal credentials when the battle was in the South could seek to trim his civil rights skills now that the issue has moved to New York City...the situation is much too grave, Mr. Koch, for you or any other public officer to justify this perpetuation on grounds of your conscientious objections to semantical "quotas."

Koch replied that he was opposed to discrimination and quotas, and quoted extensively from Bernard Gifford to point out that Gifford also opposed quotas.

Some advocacy groups realized they would need to support the Board of Education/OCR agreement to achieve their goals, even if they did not totally agree with the means.

Before the plan was officially implemented, there were two public hearings in September 1977 at Board of Education meetings. Groups such as Advocates for Children tried to organize people to support what the Board of Education was doing, in anticipation of organized opposition to the plan. This Board meeting was primarily procedural, but the advocacy agencies knew the Board of Education needed to know there was support. From their observations at this meeting, it was concluded that those against the plan were largely Jewish organizations.

Senator Daniel Patrick Moynihan spoke about the plan on the Senate

floor.⁵ He described the method of assigning teachers on the basis of race as a "prescription for division and hostility." He likened it to Hitler's Nuremberg racial laws. "In the name of moral sanity, I call upon President Carter to void this wretched contract."

Mr. President, you, who stood so bravely and acted so boldly to obliterate the vestiges of racial discrimination and the practice of racial classification from your own state, are you prepared to have persons acting in your name now export such practices to mine? Can it be that your administration wants to tell black and Hispanic Americans to line up in one queue, Jewish Americans to line up in another? If this is the policy of your Administration, Mr. President, you should so state, for it is not the practice.⁶

Moynihan observed that "a better prescription for division and hostility among Americans could not be devised" than the racist classification policy adopted by OCR and that New York City "with its large Jewish population was particularly sensitive to racist classification."⁷ A New York Times article noted that Moynihan was the first major elected official to make an all-out attack on the plan. In the same article, Dave Tatel was quoted as describing the agreement as "a major step forward in protecting and expanding employment opportunities for members of minorities and women in the New York City school system."⁸

The NAACP criticized Moynihan and mayoral candidate Ed Koch for their stance on the issue of racial assignment, suggesting they were trying to divide New York City "along racial and ethnic lines by their opposition to the assignment of public school teachers by race." The NAACP found Moynihan's speech to be "a despicable appeal to passion and

⁵ Moynihan's office denied the Senator's role in the school civil rights controversy, and access was denied to me for followup interviewing.

⁶ Congressional Record. September 23, 1977

⁷ New York Times, September 24, 1977

⁸ New York Times, October 3, 1977

prejudice which he purportedly seeks to redo in New York City." NAACP official, Foster Current, challenged Koch and suggested that Koch's black and Puerto Rican supporters re-track their support.⁹ Another NAACP official, Michael Meyers, decried Moynihan's charge that the agreement was unconstitutional and comparable to Hitler's Nuremberg laws. Mr. Meyers called the comparison "fallacious, intemperate, irresponsible, and completely hostile to civil rights. It foolishly airs the specter of anti-Semitism where there is none." The Moynihan speech, Mr. Meyers asserted, was "a particularly heinous act of political racism."¹⁰ These officials said that they had used their influence to pressure the two politicians to demonstrate that they supported the agreement and therefore civil rights.

Senator Jacob Javits countered Moynihan's criticism with an argument of his own. He found the race assignment plan to be "a difficult but necessary resolution to an extremely grave situation." The Senator defended the OCR plan on the grounds that it was imperative "to liquidate an unlawful segregation of teachers" in the school system. He suggested the next mayor try to find a better solution, within the legal requirements of creating staff integration.¹¹ Moynihan responded to Javits, saying that he too recommended that the next mayor find a solution, preferably a "random assignment process on a lottery basis."

The Times quoted State Senator Roy Goodman, who disagreed with the way the Board of Education handled the assignment process and supported the method developed by Gifford in his recommendations to the Board of Education.¹² This article also noted the difference of opinion on whether

⁹New York Times, October 3, 1977

¹⁰Albert Shanker printed Moynihan's speech in its entirety in his Sunday New York Times paid editorial. New York Times, October 2, 1977

¹¹Congressional Record, October 6, 1977.
¹²New York Times, October 7, 1977.

the Federal monies in question were really in danger of being lost to the Board. The Director of OCR was quoted as saying that, if the Board had taken the issue to an administrative judge or sought a trial in a Federal Court, "they would not have lost any of their current funding."

Shanker criticized Javits' public statement in his paid column in the Sunday New York Times.¹³ Shanker reiterated that he had signed the memo of understanding under protest. He noted that he had fought for civil rights throughout his life, but did not see that the methods to be used by the New York City schools would lead to a color blind society, just a reverse color consciousness.

Many interest groups were upset over Moynihan's reaction to the Board of Education/OCR agreement. David Saeley of PEA wrote a letter to Moynihan criticizing him for how damaging his actions had been. Lawyers from ACLU also wrote letters to Moynihan giving him a lengthy history of the issues. These lawyers also spoke to Bernard Gifford, the former Deputy Chancellor, who was a supporter of Moynihan and who, they speculated, must have been caught in a compromising position by his friend.

Impact of the Plan at the School Level

The impact of the Board of Education/OCR agreement was felt at the school level. Personnel were aware of the arguments for and against the plan. In one high school, the agreement was discussed at a faculty meeting for the proposed purpose of clarification. The principal explained that Shanker was asked to sign off, that he was in support of the necessary changes in the state education law and stated that Tatel had

¹³ New York Times, October 9, 1977

threatened Anker and Shanker with court action if they both did not sign. The principal also explained that the schools would have lost \$35 million in Federal money and possibly all Title I monies as well. He described a principals' meeting at which Chancellor Anker and supported the agreement; he quoted Anker as having said: "Because of action of this kind, we have contributed to the absence of racial tension in New York City, and why... [we]...have no racial violence. Anyone who opposes it is an extremist [referring to the plan]." The principal explained later that, when Moynihan criticized the agreement, Anker turned around and said he had agreed to the decision under pressure. According to this principal's analysis, the selection system that resulted from the Decentralization Act of 1969 had helped to end nepotism in the schools.

There were concerns at this high school about what would happen to individual jobs as the Board of Education devised measures for achieving compliance. No one was to be laid off, although some teachers might be transferred. In some schools, the teachers were asked to transfer themselves voluntarily; no one at this predominantly minority school was asked, however. The staff and administration discussed "hidden agendas." One point of lengthy discussion was what constitutes a minority group member. Orientals (a principal minority group in the school) were not included as a minority group under the OCR definition, and therefore were lumped in with the white (non-minority) group. The staff also voiced a great deal of concern over OCR's role in education. Many of the Jewish teachers and administrators recalled when they were the "discriminated-against" group within the system.

Staff Reaction to the Plan

A New York Times article¹⁴ recorded system-wide staff sentiment on

¹⁴New York Times, September 23, 1977.

the Memo of Understanding. Some of the district superintendents were so unhappy with the OCR/Board of Education plan that they urged the Chancellor to reject the Federal civil rights order and to take the matter to court. Some administrators, although unhappy over the assignment plan, supported the long range goal of the agreement and the OCR intent. Ron Walter, the new Deputy Chancellor, identified part of the problem in implementing the plan: one could not have both racial integration throughout the staff and still maintain a staff for a neighborhood school, or superintendents who would be able to keep their teachers, or have the staff reflect the racial composition of a particular neighborhood.

The New York Times interviewed several teachers who had been reassigned according to their color.¹⁵

- "We have sensitivities here and awareness that you just don't find in other cities," said Frank C. Arricale II, the personnel director of the Board of Education. "We still have Jewish people here with tatoos on their arms, Armenians who remember the Turkish situation, Serbs and Poles who remember the Czarist regime, Italians who remember going to Mass in the basement, and blacks who can recall hiding from vigilantes."
- He [Arricale] said that it "deeply offended" him and his staff to assign 4,300 teachers, most of them returning from the layoffs of the fiscal crisis, on the basis of their race.
- A teacher from the Lower East Side said, "I feel like a pawn. I was being sent around to expedite Federal law rather than to teach."
- A white teacher said, "The method of assignment was unfair and belittling to the profession, but if you love kids and you really want to teach, it was the only way to come back."
- While the Federal Government insisted that the teachers be selected out by race, many said they had resolved not to make the same distinction about their pupils that the Government made about them as teachers.
- "What the Federal Government is trying to do," Mr. Arricale said, "is fight racism by in effect emphasizing racial identification. Many decent people who look forward to a racially blind society are offended by this. The idea of racial identification goes against the very mythology we preach in our classrooms about individual worth and acceptance."

¹⁵ New York Times, October 24, 1977.

- "The problem is the politicians, not the children," said the teacher, "The politicians are making an issue of a situation that would work it self out if they didn't highlight it."

This article illustrated the strong feelings of ethnic identity still present in New York City, and the equally strong feelings against singling out racial groups for policy purposes.

The Board of Education, Fall 1977

The Board of Education was busy trying to rehire formerly "excessed"¹⁶ teachers and assigning them according to race to bring the district or school into a more equitable balance. The racial assignment issue was not the only difficulty at this time, however; this problem was compounded by late funding and by the fact that the Division of Personnel had difficulty hiring teachers.

Originally, there had been 17,500 people on the recall list. There was a massive "turndown" by these people when they were asked to return to work, however. Two possible explanations were that some did not want to go back into education, and that some did not want to work in the City schools (there are now very few schools considered "safe" for teaching). Some were concerned with job security, and others, as the Director of the Division of Personnel noted, "found the anticeptic attitude of the ivory tower organization to be better than the heavy smoke of the nitty gritty classroom, which like no other agency has borne the social revolutions of the ages." Many former teachers preferred to work for corporations. In addition, as one Board administrator pointed out, some people felt there was growing anti-white and anti-Jewish sentiment; there was also the constant scapegoating of the schools, blaming them for "intellectual genocide."

¹⁶ Excessing: Teachers in excess in a school under the jurisdiction of a community school board must be placed in vacancies within the district, to the fullest degree possible. For those in excess in schools under the Central

By November 1977, the Board of Education stated that, through the Division of Personnel, the specified city-wide percentages of minority teacher distribution had been achieved. Between 2,500 and 4,000 teachers from the common branch and early childhood education areas had been called back from the "preferred" lists. The minority teachers had been identified for assignment. If they were on the preferred lists, they were offered a chance to take a test in another license area in order to be hired and assigned. Teachers were also moved to new school assignments through recertification.

The Division of Personnel requested each district to use voluntarily within their district this same method of assignment to adjust any unbalance among schools. They also suggested that districts encourage voluntary transfer by their teachers. Some districts followed through with this, although teachers were generally reluctant to move to a new school. Through the use of the CETA funds provided to the Board of Education, the Division of Personnel was able to rehire over 500 minority teachers, which helped to balance the racial distributions. The Division used hardship transfers to balance the school system. Those requesting hardship transfers were not allowed to select a district, but were assigned in a manner that would assist in the staff racial balance efforts. The Division of Personnel made a point of calling these teachers in to discuss changes. Finally, the Division used district excessing requirements to balance out vacancies in other districts.

According to staff at the Division of Personnel, there was very little difficulty in the assignment process. The assigned teachers had

Board, they are to be placed in appropriate vacancies within the district or central office. Teachers appointed last are to be excessed first.

17 According to the union agreement, if a city-wide excess condition causes a lay-off of staff in any licensed position, the staff member will be placed on a preferred list for reinstatement to his former position.

18 Teachers ask to be assigned to districts closer to their homes,

complained initially, but once assigned, they did not want to be moved. Staff thought that teacher satisfaction with a school was not based solely on whether the area was a safe one in which the teachers did not have to be concerned about violence or muggings. Schools can be safe within bad districts, and some schools, although in "safe" areas, do not necessarily provide opportunities for teacher advancement and therefore are not necessarily satisfactory.

The Division of Personnel still had the problem of teachers' abandoning their jobs once they were recalled. This had happened historically, but now it was occurring at a higher rate. The assignment plan could be only part of the cause. The higher rate of non-return was also attributed to the fact that the system no longer represented a safe place to work. This phenomenon took place even though it was explained to the teachers in the hiring halls that if they left their assignments their names would be deleted from the lists.

Although teacher assignments were made by ethnicity, the Division of Personnel tried to keep those assignments within close proximity to teachers' homes. A small percentage of teachers did refuse assignment because they would not work in a ghetto area. Many teachers never showed up when called back, in part because it had been two years since the layoffs began. In fact, only about one of six teachers came back when recalled.

By November 1977, more than 90% of the teachers who wanted to come back had been reassigned. The rest of the teachers could not pass the recertification tests or had been assigned to a different license area. The

preferred lists had been eliminated, and there were no eligibility lists from the Board of Examiners. In fact, the last list had been created in 1971; these lists were good for only four years. The Division was drawing on the substitute lists and on lists of teachers from the temporary license areas. Most of these lists had been exhausted or the people were no longer available. Only six of 2,100 teachers from the rank order eligibility lists showed up when the Division of Personnel tried to contact them.

The staff of the Division of Personnel speculated that the lists would be completely exhausted by February 1978, at least for the elementary school positions. There were still a few lists available for the high school areas, although they were old lists. There was speculation that there would be a teacher shortage by Fall 1978. Meanwhile, the Division continued to use the rank ordered lists in making assignments. Although the Memo of Understanding required the Board of Education to stop using these lists, the Division of Personnel had to follow current State law until the requirement on rank-ordering was changed. Moreover, they did not want to ignore the rights of the teachers on these lists.

The staff of the Division of Personnel estimated that, for the 1978-1979 school year, there would be 3,800 teachers vacancies in the school system; 2,533 of these would be for elementary school positions. 1,000 of the 2,256 on preferred lists would fill those positions. Other teachers would come from the paraprofessional lists (individuals completing the career ladder program), through recruitment efforts, and by re-establishing the training geared to assist minority candidates to pass the validated Board of Examiners tests.

The Board of Education was experiencing difficulties in hiring staff, especially minority staff. A New York Times article¹⁹ described New York

¹⁹ New York Times, December 4, 1977.

[also Columbus Dispatch, January 25, 1978.] 230

City schools as being unsuccessful in recruiting black and Hispanic teachers, despite efforts of recruiting from Puerto Rican and the southern states. Part of this difficulty was blamed on the competing vocational opportunities for minorities. Other problems cited were based on the job security problems for New York City teachers and the difficulties of teaching in New York City.

There were some problems that had been foreseen in achieving the goals of the Memo of Understanding, even with cooperation within the Board of Education. Even if the Board accepted the former Deputy Chancellor's estimate of a potential 22% minority representation in the school system staff, the system was not too far from reaching this. In addition to determining the potential labor pool, there were other constraints to hiring new teachers. A Division of Personnel official explained that the Board ran into problems in helping personnel recruited from outside New York City to settle in the City. Two major problems were the high cost of housing and the fact that blacks and whites are both frightened of New York City. It was his theory that, traditionally Hispanic girls will not live away from home until they are married (a factor characteristic of other ethnic groups as well), and that blacks and Hispanics are afraid of being "ghettoized" if they move to the city. Even if a labor pool was determined, however, it was recognized that blacks with a college degree had many more options open to them besides teaching, and more often at a higher pay scale.

There was still sensitivity over the use of quotas to rectify civil rights violations. Although the Board of Education and OCR had not agreed to goals or quotas stemming from the labor pool study, they had agreed to judge subsequent actions in terms of the results of the study. Jewish organizations were adamantly against any quota systems, recalling too

²⁰ A plan presented to the Board of Education in April, 1977.

well their own experiences with labeling and discrimination. They were against placing group rights before individual rights. Other ethnic groups were also sensitive to the quota issue. For example, Italian-Americans are one of the largest ethnic groups in the New York City. This group was also most affected by the layoffs; they make up 11% of the teaching staff but represented 28% of those who were laid off during the fiscal crisis. Blacks and Hispanics, on the other hand, did not suffer from the lay-offs. The OCR analysis showed that the recently hired Slavs, Orthodox Jews, and Italians did suffer at a disproportionate rate. These groups did not fit into the minority group framework used by OCR, however.

The Board of Education undertook many recruiting efforts, including career days on college campuses, advertising (especially in prominent black journals and magazines), and lobbying to get rid of the rank order lists. The Division of Personnel found that the rank order lists served as an obstacle; from a recruiting standpoint, how could one recruit someone, make them take a test, and then put them on a list to wait until their score came up?

Other options were considered in an effort to improve staffing ratios. During negotiations, OCR had suggested that the Board of Education use a residency requirement to help integrate the staff. It is not certain if this would have integration consequences, however, because much of the black middle class (from which most black teachers would come) had moved to the suburbs.

During discussions on a policy for assignment by race, OCR had focused primarily on blacks as the discriminated minority group. The Hispanic teachers were supposedly classified with the bilingual programs; these teachers are assigned according to the program's needs, and few Hispanic teachers have non-bilingual licenses. The remaining Hispanics and the 2% to 3% Orientals on the staff were grouped as "other," i.e., Caucasians.

The plan affected other areas of the Board of Education besides the Division of Personnel. Administrative staff at the Board of Education found problems with other parts of the Memo of Understanding. For the most part, the studies outlined in the plan would be difficult to do because it was unclear how to do them. Second, the outspokenness of certain public officials created a lot of community resistance and hostility to methods and plans that grew out of the memo. This was complicated by the silence of other business groups, which made it much more difficult to achieve the goals of the memo. Third, the Bakke²¹ case on issues of discrimination and classification was soon to be decided by the Supreme Court, and it had possible implications for New York City. Some Board of Education administrators tried to argue that the memo would become unconstitutional and the Board of Education should renege on the agreement. Finally, the plan required a change in State law. The Board of Education still had to rely on the Board of Examiners in hiring new teachers until the law was changed. By January 1978, the UFT and the Board of Education had begun to meet to discuss changing State legislation. There were differences of opinion, however; the UFT wanted a centralized hiring system for assignments.

The Board of Examiners had internal problems that complicated implementation of the Memo of Understanding. By January 1978, the Board of Examiners staff had been cut by 80%. Each unit in the Board of Examiners was reduced from seven or eight professionals to one or two professionals.

The Board of Examiners was not administering new licensing tests, except when issuing temporary licenses; this involved giving area exams, examining each applicant's health records, and taking fingerprints. In a normal year they issued about 1,000 temporary licenses from September to June, but in 1977 they issued over 1,000 in September alone, pulling in volunteers to help with the extra work. They were also recertifying teachers, which included a multiple choice test, a written English test, and, for bilingual licenses,

²¹Slip Opinion No. 78-811, decided June 28, 1978.

a test of written and spoken language ability in the second language.

The Board of Education had several other internal problems to resolve in addition to those specifically related to the OCR findings. Several of these are summarized below.

In October 1977, Chancellor Anker announced that would retire at the end of his contract. The New York Times²² indicated that this announcement might have been made because the Board of Education was already looking for a successor to Anker. Meanwhile, the Board of Education's problems, including the new teacher assignment plan, were becoming issues in the mayoral election. After Koch was elected, the Times²³ printed his statements on education issues:

Seek abolition of the Board of Education and replace it with an agency directly accountable to the Mayor...Review all programs with the object of cutting administration...Continue community school boards and strengthen their managerial capacities, maintain special education, high schools, and community school programs at full strength...Establish performance standards for teachers, principals, and administrators...Eliminate custodial program and institute a contract custodial service in its place...Reduce bureaus involved in planning and design of school buildings...Eliminate automatic promotion from grade to grade...oppose assignment of teacher by race.

After the election, Chancellor Anker presented a series of issues he saw as critical to the New York City schools over the next four years. These issues included the possibility of an increase in racial imbalance, a decline in student enrollment and student performance, and continued violence and vandalism in the schools.²⁴ Anker proposed stricter requirements for a high school diploma, including a focus on basic skills. He felt that the problem of racial imbalance would get worse, and the

²² New York Times, October 1, 1977.

²³ New York Times, November 9, 1977.

²⁴ New York Times, December 11, 1977.

Board of Education would be less able to take corrective action. Koch responded by proposing to make the school system more accountable to the Mayor.

The organization of the Board of Education also became an issue.

Anker was to retire in June, and many of the Board members' terms would expire at the same time. A New York Times editorial stated:

There is widespread support for Mayor Koch's demand for a more effective voice in managing the school system. He is expected to ask the State Legislature to give him a leading role in the selection of a new board, and the State Board of Regents has voted its support of the required legislative changes.²⁵

The editorial criticized Koch for trying to select a new chancellor instead of trying to reorganize the Board.

There was a great deal of controversy over who the new chancellor would be. Albert Shanker of the UFT tried to direct the selection process as much as possible. One result of Shanker's activities was Shirley Chisholm's withdrawal from consideration; the Congresswoman from Brooklyn had been endorsed by Mayor Koch. Chisolm announced that she withdrew because "I decided I would not let Shanker push the Mayor around by using me as a tool. Shanker was threatening to hold up Koch's education reforms."²⁶ Meanwhile, John E. Zuccotti was asked to serve as the President of the City Board of Education.

The Board of Education was under attack by the New York City Comptroller, who tried to prove that the Board of Education was "overspending" at the rate of \$500 more per pupil than in other major cities.²⁷ The Board of Education argued that the figures from the different cities were not comparable. The Board of Education proposed to impose a residency requirement on all new or rehired school employees, including teachers, administrators,

²⁵ New York Times, February 25, 1978.

²⁶ The Trib, March 2, 1978.

²⁷ New York Times, October 3, 1977.

and top staff.²⁸ At the time, more than 20% of all Board of Education employees lived outside the City. Koch proposed to ask the legislature to "enact a residency law for all current and future city employees." The Board intended to implement its plan by January 1, 1978.

The civil rights issues raised in Letters One and Two were being discussed in several forums. Testimony before the New York State Assembly State Education Committee revealed that:

An immediate crisis has been created in state programs for handicapped children in the New York City schools because the federal and state governments are not providing sufficient financial aid to meet their mandated requirements, according to the School Chancellor Irving Anker.²⁹

The Committee was told that there were 9000 handicapped children on waiting lists, and that the number of children in special programs and the cost to educate them had nearly doubled over the last seven years. Several proposals were before the committee on handling this problem; one of them, presented by Anker, was that the state should provide financial incentives for school districts to mainstream handicapped pupils.

During the fall, the New York Times³⁰ ran a series of articles on integration in the New York City schools. The article blamed the lack of full integration on factors "ranging from neighborhood housing patterns to ineffective government policies, economics, and racism." In part, the blame was placed on declining proportions of white students; but a "small number of educators and civil rights advocates such as the NAACP believe that substantial desegregation is still possible. Some suggest mixing minority-group children from the city with white children from the suburbs as one possible solution." As the article described, most white children go to schools

²⁸ Daily News, November 30, 1977.

²⁹ New York Times, November 20, 1977.

³⁰ New York Times, November 21 & 22, 1977.

in which whites are the majority; minority children go to schools in which minorities are the majority. In addition, approximately 250,000 whites attend private schools in New York City. There is also a controversy over busing and the manner in which this is handled. Another Times article³¹ cited the pessimism of Board of Education members who suggest that busing would result in "white flight."

The Board of Education, Spring 1978

Several problems faced the Board of Education in Spring 1978:

- The New York State Board of Regents withheld approval of the basic competency test for high school graduation because they felt the test's standards were too low.³² This test was designed in part to hold the school system accountable.
- The City's fiscal crisis was easing. The Emergency Financial Control Board approved the restoration of automatic raises for New York City teachers based on length of service, lifting the freeze that had been set in 1975.³³
- The Kings County (Brooklyn) District Attorney's office looked into the possibility of illegal hiring policies in the New York City schools. District Attorney Eugene Gold investigated charges made by a State Board of Regents members Louis Yavner, that "incompetent and illegally appointed teachers" were teaching in New York City Schools.³⁴
- Chancellor Anker suggested that licensing of New York City teachers be done by the State Board of Regents because "schools of education are apparently not doing their job."³⁵

³¹ New York Times, November 21, 1977.

³² New York Times, February 13, 1978.

³³ New York Times, February 11, 1978.

³⁴ New York Times, February 1, 1978.

³⁵ Ibid.

- The (Federal) regulations to implement the Education for All Handicapped Children Act were finally promulgated; this presented a new burden for the schools. In addition, the law also requires that handicapped children to be included in the regular classroom as much as possible.³⁶
- New York City schools were still trying to work out integration plans. Five Brooklyn junior high schools (all in District 18) had submitted a plan to State Education Commissioner Gordon Ambach. The plan involved offering student options, controlling the rate at which the "white" schools were integrated.³⁷
- New York's Governor Hugh Carey proposed a plan to increase state aid to public schools that would channel more to city schools than to suburban schools. This plan was based on a redistribution of state aid from the wealthier districts to the urban ones, with \$31 million targeted for New York City.³⁸
- "The city's embattled school system came under attack again yesterday when the Chairman of the State Assembly Education Committee charged as many as 2800 unqualified people have been issued illegal teaching certificates."³⁹
- "The Board of Education reported that six out of ten students in public elementary and junior high schools in New York City are reading at or below the national average."⁴⁰
- Assemblyman Stavisky and Mr. Yavner wanted to change the State education law, but they also wanted to preserve the Board of Examiners. (Yavner is Chairman of the Metro-Council of the American Jewish Congress and supports rank-order lists.)⁴¹

³⁶ New York Times, February 1, 1978.

³⁷ New York Times, January 30, 1978.

³⁸ New York Times, January 17, 1978.

³⁹ New York Times, January 15, 1978.

⁴⁰ The Trib, January 12, 1978.

⁴¹ New York Times, January 11, 1978.

Court Cases Related to the Board's Plan

Several law suits arose from the Board of Education's efforts to implement the memo of understanding. By February 1978, there were three suits pending, with several interest groups intervening into these cases.

Board of Education v. Califano⁴² was filed primarily on the issue of teacher assignment by race. The government held that it would not release ESAA funds to New York City until the underlying civil rights violations were corrected. The Board of Education and two community school districts had lost funding during the summer even before the memo of understanding had been agreed upon. The other districts had gotten waivers because they were making the necessary changes in their districts to become eligible. The Board of Education and the remaining two districts were help up because the problem of the distribution of teachers by race was not scheduled to be fully resolved until 1980, according to the Board of Education/OCR agreement.

In August, 1978⁴³ the United States Court of Appeals rejected the Board of Education's argument about the need for proof of discriminatory intent on the part of the government in withholding federal funds. The city's argument had been done with discriminatory intent. Rather, the Board of Education blamed other factors, including the state educational law, demographic changes in the school, and the preferences at the local district levels, by parents and administrators. The Board of Education contended that the standard for similar to the standard used to find unconstitutional discrimination. Under this argument, both discriminatory effect and intent must exist.

⁴² 384 F 2nd 576.

⁴³ New York Times, February 22, 1979

On February 21, 1979,⁴⁴ the U. S. Supreme Court agreed to review the rejection of a request by NYC Board of Education for \$3.5 million in Federal aid on the grounds that the school system assigned teachers in a racially discriminatory way. The Court will then decide whether the Federal Government followed the correct legal tests when it turned down NYC Board of Education's request during the time NYC was being investigated. The Government (HEW) had based its action on statistics showing that teacher assignments had what is called a discriminatory "impact." HEW has maintained that intent is not a issue in the case and that the ESAA regulations contains its own standards for determining school district eligibility.

The second major court case, Caulfield v. Board of Education⁴⁵ made two claims: (1) that the agreement between OCR and the Board of Education on the discrimination and assignment of teachers and hiring of minority teachers violates the rights of local boards, parents, students, and teachers; and (2) that the race conscious remedies continued in the Memorandum were impossible because the Board had not engaged in intentional discrimination.

OCR's letter of findings was the result of unilateral investigation by OCR. It was not a complaint or a formal conclusion of a Federal or administrative court. The investigation was to continue even after the letter was sent, and if necessary, a formal complaint would be drafted. Attorneys for OCR or the Department of Justice would then take over the action and obtain any additional evidence that was needed. As the lawyer for the case explained, when the plaintiffs say there are no underlying violations, they can mean either the letter of findings does not state

⁴⁴New York Times, February 22, 1979.

⁴⁵Docket No. 77-Civil-2155. Federal District Court of New York
2nd Circuit Court of Appeals Judge Weinstein.

a bona fide civil rights violation or there was in fact no civil rights violation of any kind.

The original plaintiffs in this case were six community school districts, the Presidents of their Boards of Education, the superintendents of those local school districts, the principals, teachers, and the Parent-Teacher Association. Later, three more districts applied to be added as plaintiffs. Intervening in this case were the CSA and the UFT, which intervened in December 1977 on behalf of the plaintiffs. The UFT charged that it had been coerced into signing the agreement with OCR because OCR had threatened to withhold \$15 million in Federal funds if the negotiations failed. In addition, the union felt the compliance deadlines for racial quotas "were selected arbitrarily without reference to the impact such deadlines would have on the quality of education": the UFT stated that they were challenging only that part of the plan that dealt with racial quotas.⁴⁶ The UFT alleged that the agreement and its execution violated the constitutional rights of its members. As an alternative, they asked that all present teachers be left in their jobs, and that only new teachers be assigned by a non-discriminatory system, for however long it would take to balance the system. Intervening to defend the agreement were lawyers from the NAACP, Public Education Association, American and New York Civil Liberties Union. The Anti-Defamation League and the American Jewish Congress filed amicus briefs.

A hearing on the Caulfield case was held on March 7, 1978. The lawyer from the U.S. Attorney's Office for the Eastern District predicted that Judge Weinstein would remand the decision between the Board and OCR, although none of the parties to the case wanted this to happen. In

⁴⁶ Education Daily, December 9, 1977.

anticipation of this, several OCR lawyers and administrators were brought in to consult on this case. The various agencies tried to prevent a remand of the decision, which would be on the grounds of lack of procedural due process, by stating that they would waive their rights in this matter. They wanted the court to pay attention to the issues they had brought forward. It was the judge's thinking, however, that power concentrations must not make decisions secretly, and the government cannot just turn on or off \$100 million -- they must be fair and scrupulous. Weinstein overruled the memo of understanding on due process grounds, to the disappointment of both the plaintiffs and the defendants. Weinstein stated:

Drastic governmental action of this nature that affects the lives of thousands of citizens cannot result solely from secret, informal negotiations conducted exclusively by a handful of government officials...HEW regulations must provide for some form of public participation in such critical decision-making, especially for citizens like the plaintiffs in this lawsuit whose rights are most directly affected.⁴⁷

The plaintiffs were more concerned with the constitutional rights of staff that had been affected by the memo of understanding. The issue was not resolved by Weinstein's decision. Weinstein explained his right to make this decision, even though it had not been in the case brought before him:

Federal judges are not automatons, slot-machines who return the judgment selected if the parties agree on which button they would push...Once the jurisdiction of the court is involved, the court has an obligation to the law to decide in accordance with its view of the law, whether or not that view accords with that of any party.⁴⁸

He held that HEW needs a sure form of public decision-making with rights more closely controlled. Thus, the plan to implement the memo of understanding was vacated. Weinstein suggested keeping teachers where they

⁴⁷Weinstein's decisions statement presented in court, March 7, 1978.

were assigned to avoid further disruption. The others were to be assigned in the previous fashion. He therefore withheld judgment on the "memo of understanding."

All interested parties had agreed that they wanted a ruling on the constitutionality of the Memorandum of Understanding, rather than having the case and the Memorandum discussed for due process reasons. After the case, while all the lawyers were still around, they decided among themselves to appeal the decision. During this time between the case legally, to be handled from the national, rather than regional branch of the Justice Department.

The Board of Education was not happy with Weinstein's decision, because they wanted to retain the plan for teacher assignment. For the preceding five years, the Board had been trying to get rid of rank order lists through lobbying efforts at the State capitol. The UFT had opposed this, however.

According to OCR lawyers, Judge Weinstein's position in the Caulfield case was legally insupportable. OCR had no legal, statutory, or constitutional obligation as described in the decision. They were therefore confident that the decision would be appealed and overturned. They saw his action as a political compromise designed to help calm a tense situation, thereby nullifying an issue rather than making a real decision.

Weinstein's decision was appealed, many months later. The appellate court was more sympathetic to the perspectives of the plaintiffs and the defendants in their appeal of the decision, and reversed Weinstein's decision and the case for a trial on the merits.

Zuckerman v. Board of Education⁴⁸ was a CSA action against the Board of Education. This case argued that the fact the Board of Education is forcing principals to complete or give any racial/ethnic information violates their Fifth Amendment rights.

Other Elements of the Memo of Understanding

Meanwhile, the Board of Education had begun to implement others, more complicated elements of the OCR/Board of Education agreement. The Deputy Chancellor's office began to work on a labor pool study, which later was contracted out. They tried to get cooperation from OCR, including feedback on the study done by Gifford before he left the Board. They also asked OCR for data tapes, but they did not receive these. They nevertheless began to design their own study. This included outlining the questions they would ask, such as what geographic area should be included, to whom does it apply (graduates of City colleges, etc.), and what types of degrees do these people have. They consulted with the State Labor Department and the U.S. Department of Labor. The Board of Education also asked the Division of Personnel to do a study of the staff of the schools, including where the staff lived, who took the NTE's, and who had been hired through the Board of Examiners process.

The initial information from studies all supported the Board of Education's position. For instance, about 7% to 8% of the graduates of New York City colleges were black, whereas 13% of the teachers were blacks. From one perspective, then, the New York City public schools

⁴⁸ First Department of New York County, Docket No. 18117/77 (pending).

were doing well in minority representation on the staff. There were complications to designing this study, however. One was the variability of the potential labor pool. Just a few years previously, only 3% to 4% of the college graduates were from minorities; this changed dramatically. The only minorities considered were the Hispanics and the blacks because the other minority groups in New York City were too small. The Board of Education was also keeping ethnic/racial designations within the categories designated under Title VII. Minority groups, such as Italian-Americans and Orthodox Jews, were beginning to complain about this. Overall, it was estimated that there are approximately 50 to 60 minority groups in New York City.

This study was taking a long time, and the lack of cooperation from OCR and the Weinstein decision in the Caulfield case held up progress even more. Because the plan had been remanded, the Board of Education was not adhering to the original time lines of the agreement.

District 26

In Spring 1978 there were two more blow-ups over the OCR-required data collection. The ethnic issue became redefined as a socioeconomic issue. The District 26 Board (Queens) reacted to more than the OCR/Board of Education plan. In February 1978, they made New York Times⁵⁰ headlines when they refused Federal funds on the grounds that they did not want to provide racial/ethnic data. The premise behind their refusal was that these figures would lead to racial quota systems and special treatment of minorities. One of the things they turned down was a summer job program for minority students. The Chairman of the District 26 Board, Caulfield, along with several Board members, was suspended for this action and for

⁴⁹ New York Times, February 23, 1978.

refusing to fill out data forms for OCR.

Reactions to this came from Washington. The White House argued that District 26 should not refuse money for summer jobs for disadvantaged students, even though this would not benefit the middle-class children of that district.⁵¹ The major problem, in the view of a New York Times editorial writer, was that this district, like many others, was reluctant to accept Federal aid with strings attached.⁵² In this instance, the strings were that children from outside the district would benefit from Federal aid (one-third of the school children are bused in). Parents on both sides of the issue had been meeting over the Board's actions. This has been described as a middle-class revolt over the distribution of Federal funds.

Chancellor Anker suspended the nine members of the District 26 Board and appointed someone to collect the necessary data. Later, Anker tried to resolve the problems with this Board. Yet, as the Times pointed out, the attitudes of District 26 were not unique:

Board #26, in a well to do section of Northeastern Queens, has emerged as the spokesman for several community school boards that contend that collecting ethnic data violates individual rights.⁵³

⁵⁰ New York Times, March 3, 1978.

⁵¹ Ibid.

⁵² New York Times, March 19, 1978.

Chapter 11

LETTER TWO, REVISED

The work on revising Letter Two was done during late Spring and Summer 1977. It would appear that the appointed investigation team from the Chicago Regional Office (the Chicago Team) followed the same pattern of investigation that had been used in the previous two OCR investigations.

As part of their investigation of the Letter Two issues, the Chicago Team came to PEA seeking assistance. Originally, the Public Education Association was one of the most active interest groups involved in the investigation for Letter One and helping OCR in general. They had had a distant relationship with OCR on Letter Two. As part of their own work during these years, they had developed a special interest in handicapped children and education. The PEA staff was able to provide OCR with general information as well as specific information about this new area of interest.

At the onset, the Chicago Team had seemed very disorganized. For instance, they contacted PEA after they arrived in New York City, calling from across the street. The PEA staff found the Chicago Team to be very competent, although they noted that the Chicago Team knew nothing about New York City problems or about the first OCR study that had been done. The Chicago Team learned quickly, however, while practically camping out in the PEA office. They told the PEA staff they could not find any of the original data,

suspecting that Martin Garry had taken the data with him, so they were starting virtually from scratch. Again, the Rubinos lawyer at PEA found herself teaching about the New York City schools. She did not pretend to offer much detail related to Letter Two issues except in the special education area, however.¹

This new team was very concerned about OCR's credibility in investigating, posing questions in their research of the problems of: can we prove it, how can we prove it. Thus it seemed to the advocacy agencies that the Chicago Team was doing a very serious job of re-analyzing the original study. This critical examination of findings had been a strategic weakness of the first Letter Two.

The PEA staff found the Chicago Team to be very committed to OCR and reluctant to retract the original study purpose. The Chicago Team was not sure how Califano or Labassi felt about the review. Moreover, Moynihan had been elected Senator from New York and was heavily committed to the teacher's union, so his support of the Review was questionable. The Chicago Team tried to protect the case despite the political confusion.

The Chicago Team also visited Mary Williams of Advocates for Children, appearing at her office to ask about case studies on suspension and handicapped. She too found they did not know much about the New York City school system. She recalled later how their naiveté about New York City and the Board of Education had amazed her. Meanwhile, however, she gave them access to her files and discussed issues with them based on her experiences.

¹ This may explain why special education was highlighted so much in the revised letter.

While negotiations on the Memo of Understanding between the New York City Board of Education and the Office for Civil Rights were being conducted, the Chicago Team was finishing their investigation of the issues contained in Letter Two. They had split their time between Washington and New York City, consulting interest groups in New York City and working with support staff at the OCR Central Office. The final letter of findings — Letter Two, Revised — was pulled together during September 1977. The letter was drafted by part of the Chicago Team with assistance from the Director's office. Some members of the New York City Regional Office came to Washington to work on the letter, which was sent from the Regional Office. At this point, all data and analysis done by the Chicago Team were turned back to the Regional Office.

Letter Two, Revised was sent to the Board of Education on October 5, 1977. This letter was released without a press conference. Some of the issues included in the original Letter Two were dropped from the revised letter because OCR staff felt these issues were not as strong as OCR would like them to be.

The specific findings of Letter Two, Revised, are as follows:

- Racially identifiable or racially isolated instructional settings, (based very specifically on Section 7 and 8 of (Subpart B) of the Policies on Elementary and Secondary School Compliance with Title VI, March 1968).
- Students in approximately 3,800 classes in the New York School System (of a sample of 31,500) were unlawfully placed in racially identifiable or isolated instructional settings.

(OCR requests a plan for reassignment to desegregate racially identifiable classes and/or isolated classes; must be submitted to OCR within 45 days).

- Accessibility of appropriate guidance and discipline services to National Origin Minority Group Students. (Based on Lau v. Nichols 414 U.S. 563 (1974) and Title VI Regulation (45 CFR Part 80)).

- Students with English Language difficulties have been denied adequate guidance and counseling services.

(OCR requests a plan ensuring adequate services in this area or an explanation demonstrating that the District provides equal services with evidence to support this.)

- Discipline practices. (Based on Title VI, 45 CFR 80.3 (b) and court cases such as Hawkins V. Coleman, 376 F. Supp. 1330 (N.D. Tex 1974)).

- Black and Hispanic students are suspended more often than their white counterparts for the same offenses.

- Minority students receive worse treatment at non-minority schools than minority schools.

(Board of Education must submit an explanation for this as well as a detailed disciplinary policy as well as a plan for a non-discriminatory policy throughout the system and a system for recordkeeping in this area).

- Availability of enrichment opportunities. (Based on Title VI, above, as well as cases such as Serna v. Portales Municipal Separate Schools 351 F. Supp. 1279 (D.N.M. 1972)).

- Underrepresentation of minorities in special progress classes.

- More minority students attend schools offering no special progress classes than do non-minority students.

- More minority students attend schools which offer no placement (advanced) classes than do non-minority students.

(Request the criteria for placement and a description of alternative programs provided to these students and the enrollment by race and ethnicity of the students in these alternatives).

- Under representation of minorities and females in the special admissions academic high schools,

(OCR requests the admissions criteria, the entrance requirements, the system of grading exams, and the methods of providing exam preparation for each academic high school).

- Accessibility of bilingual psychologists and adequate psychological assessment instruments to national origin minority group students.

(OCR requests the current number of psychologists employed and the number of these who are bilingual and a plan which describes an increase of psychological services to these students.)

- Denial of appropriate educational services to handicapped students due to excessive waiting lists.

(Based on section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the regulations (45 CFR Part 84) of May 4, 1977).

(Within 45 days the district must submit a plan to OCR to eliminate the extensive waiting lists and to provide appropriate services).

- Failure to provide appropriate education to handicapped students due to shortened school day.

(Within 45 days, the District is to submit a plan to eliminate this discrimination against handicapped students.)

- Failure to provide adequate educational services to handicapped children due to inadequate and improper evaluation and placement.

(within 45 days the district should submit an explanation demonstrating that the District uses objectively validated criteria which is racially unbiased in placement of students as well as a plan to correct the under-servicing of students in special education programs.)

- Failure to provide adequate services to handicapped students due to self-contained classes.

(Within 45 days the district should submit a description of the policies for placing students in self-contained classrooms and, if the district is not in compliance, a plan to come into compliance with the regulations.)

- Failure to provide adequate educational services to handicapped students due to inadequate identification procedures.

(Within 45 days to submit a methodology the district employs for projecting the number of unidentified handicapped children within the district's jurisdiction and a description of any program for finding and identifying unserved children in need of special education services.)

The deadline of the Board of Education's response to OCR's letter was constrained by OCR's own deadlines established by the Brown v. Califano.² Letter Two Revised, as compared with Letter Two, more clearly outlined the legal basis of each of the findings of civil rights violations. Within 45 days of receiving the letter, the Board of Education was required to submit to OCR a methodology for the school system to employ to correct the violations; this was to include a methodology for projecting the number of handicapped children within the Board's jurisdiction. This plan was also to include the following elements:

- A description of any program currently in operation or to be implemented that provides for the finding and identification of unserved children in need of special education services.
- A description and explanation of the Board's policies and criteria for placing students in self-contained classes, addressed on a program-by-program basis.
- If the Board was not in compliance, then a description of a plan to comply must be included.
- A plan for developing objective, validated criteria that are racially unbiased in the placement of all students in special education categories.
- A plan to eliminate the cited discriminations against handicapped children, such as providing a full instructional day.
- A plan to eliminate the extensive waiting lists and to provide appropriate services.

The letter noted that the Brown v. Califano order required OCR to initiate enforcement proceedings by December 1, 1977, if the matters raised in the letter were not resolved.

² C.A. No. 75-1068.

The Daily News³ and the New York Times⁴ reported that the Board of Education faced the loss of \$200 million in Federal education aid. The Times described this revised letter as a "toned down substitute" for the January 1977 letter. The earlier letter had covered a wider range of alleged violations, including some against female students. According to the Times, the differences between the two letters "stemmed in part from their (OCR's) conclusion that some of the data used in the earlier report had not been as 'solid' as they should have been." The Times also noted that the letter did not cover the "full range of segregation in the school system or such issues as how students should be assigned to particular schools. Its findings involved only assignment of children to classrooms once they have been sent to a particular school." The Times was nevertheless optimistic about the resolution of this new set of violations:

The city will have the opportunity to try to explain away the disputed patterns listed in the report and to work with the government in devising a mutually satisfactory remedy, according to Federal officials. As a practical matter, a Federal cut-off of funds is thus unlikely.

Some of the issues contained in Letter Two, Revised, received more attention than others; this was reflected in the letters to the editor of the New York Times. Many people took particular offense at OCR's examination of the entrance requirements for the special high schools and of possible segregation in these schools. Secretary Califano wrote a letter to the editor of the Times⁵ to publicly explain OCR's intent on this issue. Califano explained that OCR/HEW was not asking that the standards for admittance to these schools be lowered. Rather, they were concerned that the opportunities offered at these schools be made available to all students regardless of race, sex, or national origin.

³October 7, 1977.

⁴October 7, 1977.

⁵New York Times, Nov. 22, 1977.

He then explained the questions OCR was seeking to answer about these schools.

Carl Schiffman, Investigator for the Connecticut Commission on Human Rights and Opportunities and for the U. S. Equal Employment Opportunities Commission, responded to Califano's letter, pointing out that many Federal civil rights agencies have held as a matter of policy that the way to measure the bias of a test is by its effects.⁶ He appealed to Califano and HEW to tell in very specific terms what is meant by "admissions test free of racial and cultural bias." Classroom segregation was another particularly touchy issues. One person wrote a letter that appeared on the editorial page of the Times on why classrooms were segregated, blaming Federal directives as the cause.⁷ (The response sent to OCR by the Board of Education had also used this explanation). The final letter was from Chancellor Anker who stated that no efforts would be made to integrate classes because it was not necessary, though they might try to integrate some racially isolated classrooms.

Albert Shanker made his comments in his weekly paid editorial in the Sunday New York Times. He reprinted a Wall Street Journal article that had focused on reactions to the OCR questions about the special academic high schools (Bronx High School of Science, Stuyvesant, and Brooklyn Tech) and the fact that classrooms were segregated. According to this article, many of the segregated classes were a result of Federal mandates to provide bilingual education and remedial instruction; and by "attacking the special high schools, HEW shows itself willing to damage precisely those institutions that hold out the best promise for the well-being and advancement of minorities in

⁶ New York Times, December 1, 1977.

⁷ New York Times, November 22, 1977.

the long run."

Shanker (of the UFT) and the Wall Street Journal were not the only ones to criticize the OCR findings. In a Times⁸ article on the op-ed page, Kenneth Clark and Jorge Barista took issue with both the findings and the Board of Education reactions. They explained that, although bilingual classes are Federally mandated, the guidelines forbid rather than require total segregation. In addition, they pointed out that only a few Hispanic students actually participate in bilingual program, which did not account for segregation elsewhere in the system. They also pointed out not account for segregation elsewhere in the system. They also pointed out that "Chancellor Irving Anker was held in contempt by the Federal District Court a year ago for "extravagently long and benign tolerance of outright defiance as well as foot-dragging and evasion in implementing the consent degree." Finally, they claimed that the Board of Education did not collect the OCR data themselves, so as not to know what corrective actions they should be taking. Therefore, the Board of Education could not claim that the classes OCR identified as racially isolated could be bilingual classes.

The Board of Education responded to Letter Two, Revised in Two parts. The first part came at the end of November 1977, while the Board of Education waited for additional data from OCR, that they needed to respond to the other issues. Later, in January 18, 1978, the information for issues II and III (and part of I) was sent to OCR. A few districts still had data to be sent in; this information was to be forwarded later by the Board of Education. Chuck Schonhaut, Special Assistant to the Chancellor, had again been put in charge of the response to Letter Two, Revised. As with the other responses to OCR, Chancellor Anker pointed out that the Board of Education was in compliance with the civil rights regulations.

⁸ New York Times, December 13, 1977

• Racially identifiable or racially isolated instructional settings

Later, upon examining all the classes, the Board of Education refuted the allegations and demonstrated that in 96% of the cases cited by the Office for Civil Rights the class rooms were either legally or educationally valid.

The Board of Education examined all the racially isolated classes identified by OCR. With the first report, based on the response of 11 Districts, the Board of Education found that 96% were within the legal requirements or valid educational practices.

• Accessibility of appropriate guidance and discipline services to national origin minority group students

The Board of Education initiated an independent survey to the districts cited under this allegation. It was the Board of Education's findings that the children received equivalent, and sometimes, more services than the average English speaking children do. The Board of Education pointed out that many job categories can provide this service (e.g., teacher, principal, etc.) and that they examined each district cited by the OCR and concluded that the allegations were no longer current. The letter concluded this issue by stating that none of these cases existed in 1977-1978 in the cited schools.

• Discipline practices

The Board of Education responded to the OCR in terms of OCR's request for information, by including an explanation for OCR's findings of disparate racial impact of the districts present discipline practices. The Board of Education gave a history of problems with the data collected by OCR. According to this history, the Board of Education could not assume the accuracy nor the reliability of the data gathered. In addition to system wide data collected, the OCR and conducted an

indepth survey of 54 schools for an intensive compliance review of the spring of 1976. The Board of Education, in turn, analyzed the statistical reports. Because of the weakness of the data, the Board of Education conducted on-site investigations of present disciplinary practices in a sample (11%) of these 54 schools. Their findings revealed that socioeconomic level of families rather than race were related to suspension rates. They also found, that for most offenses, the percentages of minority and non-minority students suspended are comparable.

In addition, the Board of Education argued that principals may not suspend students for longer than five days, and, if a parent comes in for an interview, this suspension time may be shortened. This, the Board of Education does not agree with the OCR that minority students are suspended for longer periods of time than non-minority students for the same or comparable offenses.

The Board of Education offers as evidence of their present discipline policy their Special Circular No. 103, 1969-1970. In all the schools they visited, the special circular was being followed. Therefore, they conclude that their present policy is non-discriminatory in nature, and is applied uniformly. They did, however, say that, in conjunction with OCR 101/102 surveys, they will require recordkeeping on students to include: an index card of per student history of suspensions by ethnicity and tally sheet of students by ethnicity who are suspended (though not by the number of suspensions).

- Availability of enrichment opportunities significantly more minority students attend schools which offer no advanced placement classes than do non-minority students

The Board of Education cited their procedures for these classes and the alternatives available to students. They offered lists of the curriculum and the schools in which these programs are offered

as well as pointed out that the community school districts also have the power to determine these programs. Finally, they concluded by pointing out that the OCR data was no longer true.

They also pointed out that the admissions policies for the three special admissions academic high schools were similar. They submitted details of how students get admitted and described the testing procedure. They also point out the change in proportion of minority students. In addition, 49% of the students to these schools come from private and parochial schools, which has a higher percentage of white students than do the public schools. They are admitting girls to these schools by the same admissions standards.

- Accessibility of bilingual psychologists and adequate psychological assessment instruments to national minority group children.

The Board of Education's response begins by correcting OCR's data, citing the number of full and part-time psychologists employed by the districts, including those who are bilingual. They explain that the psychologist is only part of the evaluation team for a child's assessment. In addition, when a non-English-speaking child is referred, an individual of appropriate language ability is called in.

Thus, no one is denied service due to language background. They point out that the Evaluation Unit has used standardized tests in Spanish and assisted in norming new tests to be used with Spanish-dominate tests. A plan to increase the availability of psychological services was through new staff, recruitment, renorming tests, and a pluralistic scope of evaluation was included.

- Denial of appropriate educational services to handicapped students due to excessive waiting lists.

The Board of Education referred to the waiting lists as a cycle

during which the students are being processed. Thus, these are not the same students, but different students being moved through the different phases of the evaluation. In addition, they are making changes in the evaluation. In addition, they are making changes in the evaluation process to reduce the waiting time. This process was described.

- Failure to provide appropriate education to handicapped students due to shortened school day

According to their judgement, the lunch period is an instructional period for these children. They described the type of instruction provided by the type of handicap.

- Failure to provide adequate educational services to handicapped children due to inadequate and improper evaluation and placement

The Board of Education pointed out that the Dept. of Special Education Pupil Placement services uses objective, validated criteria for evaluation and placement of students, which is racially unbiased. They cite a report by the Joint Commission on Mental Health of Children as evidence for the fact that more low income families, of which the greater percentage in NYC are minority, suffer the effects of poverty on mental health. The reason there is an over-representation of minority students in mentally handicapped is because of the effects of racist attitudes on the development of minority children and because middle class families in NYC have the financial resources available for private schools or private therapy.

They point out that the proportion of minority students in special education classes is not unrepresentative of the proportion of minority students in the city public school system. The evaluation work-up for placement of students is described as fair and non-discriminatory.

This process is described in detail. Placement for neurologically impaired classes and the current distribution of students in the elementary and junior high schools are described.

- Failure to provide adequate educational services to handicapped students due to inadequate identification procedures.

The Board of Education listed the programs and described the processes for each in order to provide this to be incorrect.

- Failure to provide adequate services to handicapped children due to self-contained classes.

The Board of Education described their policies for placing students in self-contained classes. Their plans for mainstreaming were described, in addition to their current classes for the various kinds of handicap.

The responses sent by the Board of Education did not in OCR's view, constitute a plan to correct the violations. The response denied OCR's statistics in several places and offered explanations for why the situations were necessary to make the numbers appear as they did. The Board of Education did begin to change policies in some areas however. For instance, the 46 schools for pregnant girls and for handicapped children were reorganized, and attempts were made to reduce the backlog of handicapped students waiting to be placed in a classroom or program which typically had taken many months.⁹ It is unclear whether these actions were a result of the Letter Two, Revised, however.

OCR's Response

Although the Board of Education sent their response to the regional

⁹New York Times, December 24, 1977

office (II) of OCR, the national office of OCR sent a reaction in January 24, 1978 to the Board of Education's November response to Letter Two, Revised. Tatel, who sent the letter, reminded the Board of Education of the Brown v. Califano court ordered time limits to the resolution of these issues. If the issues were not resolved by March 1, 1978, OCR would have to initiate administrative enforcement action. This letter was followed by an analysis of the November response.

- Racially identifiable or racially isolated instructional settings.

They found the Board of Education information to be inadequate to rebut the OCR findings. OCR data analysis controlled for several of the explanations offered by the Board of Education. OCR described its ability grouping criteria policy. OCR pointed out that those students in classes the Board of Education identified as consent decree classes were not to be so isolated the entire school day. OCR did not accept the other explanation that some parents requested some of the class placement, as this is not a legally acceptable excuse.

- Availability of enrichment opportunities.

OCR underlined the areas in which the Board of Education did not offer all the information requested. For instance, what is the availability of special progress classes in intermediate schools? How does the Board of Education select the schools in which to centrally locate special progress classes?

They point out the need to inform parents and children of opportunities available in this area. OCR still wanted to know what tests were used by the Board of Education to select students to be admitted to the special admissions academic high schools, as

well as the names of the junior high schools which offer preparation courses for these schools.

- Accessibility of bilingual psychologists and adequate psychological assessment instruments to national origin minority group children.

OCR wanted the results of Board of Education survey of handicapped children whose language dominance is other than English.

OCR wanted more information on the number of bilingual psychologists and the qualifications of those giving the bilingual tests.

- Denial of appropriate educational services to handicapped students due to excessive waiting lists.

OCR described the Board of Education's response to this issue as inadequate. OCR requested detailed descriptions of the Board of Education's new referral system plan.

- Failure to provide appropriate education to handicapped students due to shortened school day.

OCR did not accept the Board of Education's rationale that lunch period for handicapped students was an instructional period and an acceptable educational justification.

- Failure to provide adequate services to handicapped children due to inadequate and improper evaluation and placement

OCR requested more information on the specific tests the Board of Education used and how these were validated. OCR described the Board of Education's justification for overrepresentation of minorities in emotionally handicapped classes as unacceptable.

- Failure to provide adequate services to handicapped children due to self-contained classes.

OCR requested more specific information on the Board of Education's policy to maximize the integration of handicapped students into the educational program.

- Failure to provide adequate educational services to handicapped students due to inadequate identification procedures.

OCR wanted the Board of Education's statistics on referrals of children and on children found in need of special education service.

There were concerns, in at least one advocacy agency, about the Board of Education's response to the OCR Letter Two, Revised. It was thought that the Board offered only administrative explanations without factual data and that this response was generally unresponsive to the issues raised by OCR's letter.

At another agency, as she had done with the original Letter Two, Mary Williams of Advocates for Children sent letters to various community organizations and advocacy agencies, which included a summary of the OCR findings, the Board of Education's reply, and OCR's response to the Board of Education. She stated that the Board of Education and OCR were still negotiating to resolve the issues and, if they were not resolved, the case would go before an administrative hearing or be tried by a Federal judge. She urged her recipients to write to the Regional Director of OCR about the issues, especially about their own experiences, and to state whether they agreed with the Board of Education's response, including any evidence they had to the contrary. She asked that copies of these letters be sent to her.

Meanwhile, OCR and the Board of Education were working on negotiating the plan for Letter Two, Revised. They were trying to follow the deadlines set down by Brown v. Califano. An enforcement letter had been sent out; according to the deadlines, they had to move to administrative enforcement in May if a settlement was not reached.

Negotiations on this letter had begun early in 1978, again using the

same civil rights lawyer, Nick Flannery, as OCR's negotiator. According to press releases, the negotiations were going well. The assistant to the Director of OCR had been intimately involved in these and in previous negotiations until he decided to leave OCR for a job at the D.A.'s office in New York City.

In June 1978 the Board of Education of the City of New York and the Office for Civil Rights were able to decide upon the terms of what is known as the Letter of Agreement Between the Board of Education of the City of New York and the Office for Civil Rights, U.S.D.H.E.W. While the Board of Education had denied that many of the questions of policies and practices were in violation of the laws and regulations, they were able to meet with OCR to resolve their differences. The fulfillment of the terms of the agreement will constitute compliance with applicable legal requirements. These resolutions are as follows:

- Racially identifiable or racially isolated instructional settings

The general policy is, for classes to be organized in an integrated way, for schools or grades where there are minority and non-minority children.

- o kindergarten, grade one: classes must reflect the ratio of the population of the grade; when this is not the case, educational justification documentation will be necessary. This must show criteria and purposes are objective and nondiscriminatory. Classes may be regrouped for reading and math and must be for the curriculum purposes only and for 25% of the school day at most. Special efforts to raise the levels of the lower groups must be documented.
- o grade 2: individualized or intra-class grouping for specialized instruction such as reading or math is permissible. If it is not representative, the reorganization must be done using a relevant, reversible, non-discriminatory criteria. This instructional time must not be for more than 25% of the school day.

If organized for ability grouping: (that is the classes are) they must follow: a) principal must demonstrate that the grouping was educationally compelled; document this and the criteria for grouping and how these are objective and non-discriminatory (except in the case of Consent Decree programs) b) must be two distinct ability groups and no two groups are to be adjacent as they must be stratified, non-contiguous; c) selection of students for groups must use recognized objective non-discriminatory assessment of reading; d) teacher judgment may be used; e) suggested using individualized instruction and intra-class grouping to address levels in class; f) classes are to be integrated when there is no educational need for maintaining the differences.

- grade three through nine: classes can be reorganized through individualized instruction, intra-class grouping or reorganized by class. When it does not reflect the ratio of composition of the grade, objective, non-discriminatory criteria must be used; reorganization must be limited to the specific instruction/curriculum. When grouped for ability grouping, organization must apply the following: a) be limited to three or fewer categories; b) selection for students in each category must be through recognized objective non-discriminatory instruments; c) teacher judgment may be used to supplement this; d) individual instruction or intra-class instruction may be used to handle the range of abilities; e) classes in different categories are to be integrated when there is not educational need for maintaining the categories. In addition, when classes do not reflect the composition (nonmin/min) reasons and documentation must be prepared by the school.
 - for all classes: when a class or category does not reflect the ratio of min./nonmin. of the grade, the school must implement special efforts to raise the achievement level of the lower ability group students; these efforts must be documented, including the social efforts, yearly retesting, and the changes in student placement among the groups.
 - accessibility of appropriate guidance and discipline services to national origin minority group students
- OCR accepted the Board of Education explanation that it (the Board of Education) currently provided appropriate guidance and discipline services to national origin minority group students.

- discipline practices

While the Board of Education denied that the data supported the findings that minority students are suspended more frequently or for longer than nonminority students, they

(and OCR) agreed upon additional monitoring and review procedures with respect to suspensions. Special Circular No. 103, 1969-70 was amended which required this data collection for monitoring.

• Availability of enrichment opportunities

While OCR found and alleged that minority students were statistically under-represented in special progress classes, that these classes are less accessible for minority students, that advance placement classes are also less accessible and that the three special admissions high schools are (academic) under represented by minority students.

The Board of Education explained that these advanced placement classes are located and OCR accepted that explanation, as well as the Board of Education's explanation that sound non-discriminatory test instruments were used for special progress classes eligibility.

The Board of Education did agree to augment for students (who attend schools where special progress classes are not available) options to attend such classes in other schools, through notification and counseling procedures.

The Board of Education also argued that the admissions procedures for the special admissions high schools were nondiscriminatory which OCR accepted.

The Board of Education also suggested that a comprehensive examination of the system's entire program for talented and gifted students (as opposed to examining each facet) will support that the program, as a whole, is nondiscriminatory available to minorities and nonminorities. OCR accepted this, though it is subject to verification as soon as possible.

• Accessibility of bilingual psychologists and adequate psychological assessment instruments to national origin minority group children

OCR accepted the Board of Education's explanation that services in question are provided with substantial equivalency and cases of disparities are due to temporary exigencies, such as the unavailability of trained staff, for which the system is trying to remedy.

• Denial of appropriate educational services to handicapped students due to excessive waiting lists

The Board of Education agrees to a) place all students referred prior to April 1978 in appropriate programs by

September 1978; b) those referred after April 1978, will be offered placement by November 1978; c) those found after September 1978 will be offered placement within 90 days of after referral; this will become 60 days after January 1, 1979.

- Failure to provide appropriate education to handicapped students due to shortened school day

The Board disagrees that handicapped students are denied a full instructional day, and that relevant students are placed in programs which provide instructional lunches. As a result, the two parties agreed to defer consideration of this issue, pending further inquiry.

- Failure to provide adequate educational services to handicapped children due to self-contained classes.
- Failure to provide adequate educational services to handicapped children due to inadequate and improper evaluation and placement.
- Failure to provide adequate educational services to handicapped students due to inadequate identification procedures.

OCR's data were collected in school year 1975-1976, while the applicable legal requirements were not fully effective until summer 1978. In addition, the Board of Education does not believe the information demonstrates violations in the three categories. Consideration of these three issues has been deferred pending further inquiry and analysis.

This plan was much different from the Memor of Understanding that resolved the issues of first letter. It required the Board of Education to study itself through newly agreed upon data collection efforts, rather than to implement any procedural changes.

Shortly after the agreement between OCR and the Board of Education became public, one of the advocacy agencies, Advocates for Children summarized the letter of Agreement and its implications for NYC schools from their perspective. In their words,

The letter of agreement represents little more than a promise by the school system to comply with the law and a tacit agreement by OCR of both the continued segregation of hundreds of thousands of minority children in low level ability groups and the continued disparate treatment of minority children under the student discipline systems.

The analysis harshly criticized OCR's role in the agreement, describing this as "a total capitulation by OCR in callous disregard of its own findings and of the statutes it enforces". The analysis noted the change in issues from Letter Two to Letter Two, Revised (such as the withdrawal of all Title IX issues and the additional for the issue of discrimination in the evaluation and placement of handicapped students). The analysis concluded by stating that "(t)he OCR-Board of Education letter of agreement sanctioning massive civil rights violations within the schools of New York City, if unchallenged, is likely to destroy much of the legal progress made in the last fifteen years to eliminate racial discrimination within the nation's schools."

Many other interest groups were dissatisfied with this plan. At one point, in July 1978 several groups met with the ex-director of OCR, Martin Gerry. The groups in attendance included the Public Education Association, Advocates for Children, NAACP, Puerto Rican Legal Defense Fund, Legal Aid Society NYCLU, and ACLU. Gerry had asked to speak with these about the issues, including those issues that had been handled poorly in the agreement and those that had been dropped between the two versions of Letter Two. It is very unclear whether there is a legal structure for deciding on discrimination in ability grouping. Gerry pointed out what law did exist; although there is nothing about ability grouping in Title VI, except that

in-school segregation is dealt with indirectly by Section 601 of Title VI.¹⁰ Gerry, as Director of OCR, had developed a very clear legal standard on the issue of ability grouping, including a series of requirements for its justification. The standard included a need for educational reasons, a limitation of ability grouping for educational needs, a demonstration of special services provided, a time-boundedness, and a demonstration of substantial educational development on the part of the students.

Gerry's overall argument was that, if OCR and the New York City Board of Education had made such a weak agreement, this would set a precedent for other cities and plans to be developed. He spoke of rumors of political involvement, especially on the part of Califano. Gerry suggested that the interest groups request a review of OCR by the Justice Department. Although he was suggesting very strong actions, Gerry indicated that he would prefer to take a passive role.

One interest group member suggested that OCR/HEW be sued. Other suggestions included that they should not file a suit in New York City, because no Federal judge would cut off funds in his own region. The group decided that they would try to meet to decide on some action, including writing a request to the Justice Department indicating an active interest in litigation. They were also concerned with the flow of money for ESAA projects, which Gerry volunteered to explore for them. They also decided to appeal to White House staff. They finally decided to try several tactics at once.

They finished the meeting by going over the points of the agreement, with Gerry giving his interpretation of where he thought the agreement was

¹⁰ Title VI (Section 601) No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. (Nondiscrimination in Employment, 1973-75 by Ruth G. Shaeffer, The Conference Board, Inc., 1975. New York City)

weak or unfounded. He criticized OCR for accepting plans for "further study" as an agreement. Gerry also pointed out the issues that had been dropped from consideration — sex segregation in classes and vocational education.

Soon after this meeting, the representative from the Legal Aid Society drafted a letter to be sent to President Carter concerning the agreement. The interest groups had a difficult time building a case, however. The lawyers found Gerry's arguments too weak to form the basis of any litigation. They were also skeptical of Gerry's motives in appealing to them. Although they met again in small groups to look into the issues further, little came of it.

Part Three

ANALYSIS AND MODELING

Chapter 12

DISCUSSION OF THE ISSUES AND THE INVESTIGATION

This study was conducted to shed light on what is a policy process and on what makes the process develop in the particular way found in this case study. In general, a process would include the stages of planning, decision-making, implementation, and institutionalization. Various factors contribute to the development of each phase, and we cannot state definitely that each phase will occur. This particular policy process is based on the goals of the Civil Rights Act of 1964, specifically as applied to the New York City school system. Even though the study was thus focused, it was nonetheless very general and involved many complicating elements.

There has been little change in New York City as a result of OCR's efforts, however. The following analysis examines the process of change, the characteristics of the agencies that encouraged or altered change efforts, and the outcomes of these efforts. The analysis will not explain why changes did not result, but rather will discuss the factors that contributed to this poor output.

The Issues

Several issues were raised in the course of the OCR investigation. The following is an analysis of these issues and their impact through the Memorandum of Understanding and the Letter of Agreement. The issues are presented in order of their origin.

Original Issues (Discussed in 1974)

1. Teacher assignment and experience. This issue was raised in Letter One and later resolved in the Memorandum of Understanding. In the Memo, the Board of Education agreed to balance the racial distribution of staff

(1) within districts and (2) within schools, both by 1980. The Board of Education used a method of teacher assignment to comply with the agreement, whereby recalled teachers were selected and assigned to districts by race. This method of assignment was stopped when the Memorandum of Understanding was vacated by the court. A teacher's race, but not sex or handicap, was considered in this issue.

2. Professional staff degree distribution. This issue was raised again in Letter One, in which OCR claimed that teachers with fewer advanced degrees were assigned to schools with a higher percentage of minority students. This was not included as part of the Memo, however.

3. Instruction expense comparability (including the specific issues of assignment of gymnasiums and pools in high schools, age and current modification of school buildings, utilization of buildings, and per pupil library expenditures in high schools). The general issue was dropped when Letter Two was dropped and the specific issues were never raised in Letter Two. In Letter Two the issue was redescribed according to how minority students were denied equal educational resources in New York City by being provided less financial support for their education: Less money per student was allocated for instructional services at the high school level, poorer and more limited facilities and educational materials were provided, and the students were provided a more limited curriculum. All these issues were dropped with Letter Two. None of the specific charges of discrimination in this general category was found to hold true in the New York City schools. OCR also charged in Letter One that the New York City public schools provided a lower level of financial support for female athletic coaching programs than for male; this was dropped during the negotiations.

5. Number of students enrolled in special progress classes by ethnicity.

This issue was raised throughout the investigation for Letter Two and Letter Two Revised. When the plan was being negotiated, however, OCR accepted the Board of Education's explanation and the issue was dropped.

This issue had been raised in several ways. In Letter Two, OCR charged restriction of educational alternatives in secondary programs indicated that minorities and female students were underrepresented in the special admissions academic high schools. In Letter Two Revised, this issue was described in terms of the availability of enrichment opportunities: (1) That there was underrepresentation of minorities in the special progress classes; (2) that minority students attend schools offering no special progress classes more than do the non-minorities; (3) that more minorities attend schools that offered no placement (advanced) classes than do non-minorities; and (4) that there was an underrepresentation of minorities and females in the special admissions academic high schools. The Board of Education in the negotiated plan explained where the special progress classes were located and the fact that the Board has been using sound, non-discriminatory test instruments for special progress class eligibility. OCR accepted both explanations. The Board of Education agreed to augment options for students in schools without special progress classes, however, to attend such classes in other schools. OCR also accepted the Board of Education's argument that the special admissions high schools' admissions procedures were non-discriminatory. The Board of Education also suggested that a comprehensive examination of the entire population gifted and talented students would support their contention that the program as a whole is non-discriminatory. OCR accepted this pending verification.

6. Participation in classes for the handicapped by ethnicity and

language background. In Letter Two, the issue was raised that minority students were overenrolled in classes for emotionally handicapped, mentally handicapped, and educable mentally retarded. This issue was not raised in Letter Two Revised, however.

7. Other issues pertaining to ethnicity and language background in the New York City Schools. OCR found a number of segregated class settings with no compelling educational justifications. This issue was carried through both Letter Two and Letter Two Revised. An extensive plan was developed to rectify this situation and to develop a policy to be used throughout the system specifying the need for educational justification, and the length of time a student is to be regrouped for subjects such as reading or math.

In Letter Two, OCR charged that New York City followed discriminatory discipline practices, that disproportionately large numbers of minority students are being kept out of school more frequently and for longer periods for time as a discipline measure than are non-minority students. OCR also found that the guidance programs differ from minority to non-minority schools: That guidance programs in non-minority schools showed a greater emphasis on career and academic counseling, and that the predominately non-minority junior high schools had more extensive parental involvement programs than the predominantly minority schools did. Letter Two Revised cited only the issues of discipline: That Black and Hispanic students are suspended more often than the white students and that minority students receive worse treatment at non-minority schools than at minority schools. In the negotiated plan, the Board of Education denied that the minority students were suspended more frequently or for longer than the non-minority students. They did agree to additional monitoring and review

procedures with respect to suspensions.

Issues Raised in Letter One

1. Access to equal employment opportunities in the New York City public schools. Letter One pointed out that teachers were denied access to employment opportunities through the use of racially discriminatory selection and testing procedures and through the use of racially identifiable employment pools. To resolve this, the Board of Education agreed, with the endorsement of UFT President Albert Shanker, to support and sponsor state legislation to: (a) validate all tests prior to use; (b) merge all eligibility lists; (c) abolish the use of rank ordering those who passes the exam; (d) use affirmative action mechanisms in hiring and assigning teachers; and (e) promote these throughout the system. The Board of Education also agreed to have an outside expert conduct a labor pool study by race, ethnicity, and sex, to have the teaching and administration positions to be within a range representative of these findings by 1980.

2. Access to employment for and promotion of staff to administration. Letter One found that the New York City public schools denied females' access to positions as principals and assistant principals. In addition, OCR found that female teachers were deprived of seniority rights and other compensation though failure to eliminate the effects of past discriminatory leave policies. The Board of Education committed itself to a program of affirmative action to increase the number of women in the supervisory services. This issue was limited to sex-type and was not raised for race-type, although the study identified above may resolve that problem.

Issues Raised by Letter Two

1. Denial of equal educational resources by diverting Federal funds. This issue was dropped when Letter Two was dropped.

2. The inclusion of sex-related issues of discrimination in the provision of educational alternatives in secondary education. OCR found that female students were underrepresented in the special admissions high schools, that 85% of the vocational schools were sex segregated, and that female students were channeled into sex stereotyped courses of study and were underenrolled in advanced math courses. The only issue that was raised again in Letter Two Revised was that female students were underrepresented in the special admissions high schools.

Issues Added in Letter Two Revised

Several issues pertaining to the provision of educational services for the handicapped were raised in Letter Two Revised. According to this letter, the New York City public schools (1) denied appropriate educational services to handicapped students due to excessive waiting lists, (2) failed to provide appropriate education to such students due to a shortened school day, (3) provided inadequate and improper evaluation and placement, and (4) provided inadequate identification procedures. The Board of Education, in the agreement of negotiation, agreed to place all students who had been referred by April 1978 in appropriate classes by November 1978. After January 1, 1979, all handicapped students will be placed within 60 days of referral. OCR and the Board of Education could not agree whether lunch periods were part of the instructional day. This issue was deferred pending further inquiry.

Issues Never Used in Either Letter One, Letter Two, or Letter Two Revised

Several issues were not included or did not prove to be discriminatory and were therefore not part of the letters of findings. These issues are:

1. Schools receiving categorical aid under ESAA Titles, I, II, III, VI, VII (Urban Education);
2. Teacher absenteeism;
3. Number of courses in a language other than English offered by the high schools;
4. Desegregation indices for high school English classes;
5. Attrition between 11th and 12th grades;
6. Enrollment in work-study programs; and
7. Pupil attendance.

The Resolved Issues

Only a few of the issues were resolved to create changes in Board of Education policies and to establish new procedures; half of these issues were part of the Memorandum of Understanding, which has been questioned in the Caulfield case. The decision in this case could affect further implementation of these resolutions. Many other less obvious factors could promote or hinder further implementation of these resolutions.

Below is a discussion of the support for and the resistance to the issues as they were resolved. Most of these issues had been criticized; many were concerns that individuals within OCR or within interest groups had wanted to have resolved.

1. Teacher assignment and experience. This was an original issue that expanded by the administrative complaint and the resulting development of an investigation parallel to the examination of educational services.

The data collection for this issue created great difficulty for OCR during the investigation; it aggravated the hostility and raised suspicions about the purposes for which the data were being collected. This issue also prevented the Central Office and District 11 of the Board of Education from being eligible for ESAA funding of \$24 million. The Board of Education plan developed to carry out the terms of the Memo further aggravated racial tensions for both minority and non-minority groups, making the resolution of the violation more difficult to complete.

2. Language ability of high school students. Although OCR resolved the issues related to national origin minority students by the Board of Education's current policy, these issues were addressed in part in the ESAA letters, which the community school districts received in Spring 1977. Corrective action was taken by the districts at this point; some district entered into joint Lau plans with the Central Board of Education, others developed their own plans. The issue of the rights of national origin minority students, particularly Puerto Rican children, had been the basis of the initial request for the New York City Review. In addition, New York City under the ASPIRA consent decree specifications, was to provide appropriate educational services.

3. Segregated classroom settings. This was the only issue from Letter Two Revised that resulted in a specific plan for correcting possible racial isolation; it outlined a policy that included time limits for grouping and the need for educational justification when segregated settings were necessary in schools. This issue was favored by Martin Gerry, the former Director of OCR: He met with interest groups the summer of 1978 to discuss ways in which the groups could protest the Plan of Agreement between OCR and the Board of Education. It was found that he had designed an OCR memorandum

for school superintendents, specifying when and under what conditions segregated classrooms for ability grouping were appropriate. Little legal structure yet exists for deciding on discrimination in ability grouping beyond general references to in-school segregation under Title VI.

4. Access to equal employment opportunities in the New York City public schools. Support for resolution of this issue was mixed. It was not one of the original issues raised by OCR but was part of the administrative complaint filed by Larson and Eisenberg of ACLU and the Williamsburg Legal Services, respectively. Many of the advocacy agencies were more interested in the problem of access to teaching positions than they were in the issue of assignment within the district. Moreover, the selection mechanisms had historically been criticized as cumbersome and discriminatory. The Board of Education had previously wanted to change the policies for selection and hiring staff; the Board had lobbied for changes in the state education law that were similar to many outlined in the Memo.

5. Access to positions in and promotion to administrative levels. This issue was dealt with lightly throughout the review and the negotiations. Although it was included in the Memo, it was narrowly resolved, because the solution applied only to females and not to minorities. The Board of Education agreed only to an affirmative action program to increase services without specifying the proportions of male and female administrators they expected to achieve.

6. Denial of appropriate educational services to handicapped students due to excessive waiting lists. This was the only issue pertaining to handicapped students that was resolved in the negotiations of Letter Two Revised; the Board of Education agreed to a time limit for placing students on (or going to be on) waiting lists. All other issues concerning educational

services to handicapped students were deferred pending further inquiry; at present no standards exist to utilize in resolving these issues. There had been some interest group support for and interest in the rights of handicapped students. In addition, at the time Letter Two Revised was presented, Chancellor Anker testified before the State Education Committee about the crisis for handicapped children in New York City because of the lack of resources and the mandated requirements. He stated that there were over 9,000 children on waiting lists who need to be evaluated for placement.

Out of the potential issues, only seven were resolved; in many cases what was resolved was only part of the whole issue that had been raised. The others had either been dropped, deferred, or nullified when OCR accepted the Board of Education's explanation.

One question that could be raised about this policy process is why these were the only issues that were resolved out of all the potential issues that existed. In part it was because of the nature of civil rights investigations and negotiations for changes. OCR had several problems identifying civil rights violations, negotiating a resolution, and maintaining the agreement. For example, the case of ability grouping and racial isolation was difficult to prove. The stipulations preventing segregation within schools had only been described by an OCR memorandum to school administrators by the former director of OCR, Martin Gerry. The Review Staff also had to identify the criteria by which a classroom could be identified as a segregated setting. Finally, reports of falsified data made it even more difficult to separate segregated classes from non-segregated classes when the data were analyzed. The Board of Education in recollecting the data found a different description of the classrooms

from what OCR had found to be segregated classroom settings without educational justification for the grouping. The problem was both to find legally sound criteria against which to analyze the data and to find solutions and enforce change to resolve the issue. These problems alone do not explain why OCR was not "more successful," however.

Development of the Issues

The results of the investigation are not based solely on the nature of the issues themselves or on the nature of civil rights investigation. The process of the investigation and negotiations was much more complicated than the design for an investigation would be. These complications within the progress and patterns of interaction reveal some of the vested interests over issues and suggests some of the dynamics that affected the outcomes of the New York City Review.

Following is a description of an "ideal" process for investigation. A model of scientific rationality describing how decisions can be made by following the described sequence of actions below. This is contrasted with the process that grew out of the review of the New York City schools. The ideal-type process is very similar to a rational model approach to investigating civil rights.

scientific rationality (Lippman, 1975)	choice	search of means	categoriz- ing and comparing	analysis of alternatives and consequences	strategy
investigation a com- pliance review of civil rights	identification of need for an investigation	collection of information and data as identified	analysis of data	presentation of Letter of Findings	resolution of findings and development of a compliance report

The general sequence of activities followed this process, although events became more complicated as the review progressed through the negotiations and implementation of various findings.

The actual process that resulted can be examined at two levels. The first is a bureaucratic-process level which marks the production of reports, court decisions, negotiated plans and to some degree newspaper account, all of which are artifacts of the policy process. These products represent actions that occurred and mark the reaction to or beginning of resulting activities. Different sets of issues surround each of these points. Various organizations, groups, and individuals worked toward (or in conflict with) social goals or objectives; the combination of these efforts are the activities that resulted. The products are used as means to new ends as new activities result, thereby progressing the policy of concern through its developmental course.

The course will have a form and substance that results from a combination of factors. The factors that complicated the investigation were the addition of steps to each phase, the addition of the numbers of people and agencies, and the addition of issues. The characteristics of the various individuals, organizations, and issues in part explain the complexity of the process and why it developed in the manner documented in terms of the scope of the process and the context of the problem.

The scope of the policy process was not defined solely by the two letters of findings delivered to the Board of Education. There were many issues left undiscovered, and collected data were left unanalyzed. Issues were sorted out throughout the process as illustrated earlier in the chapter. The process itself came to include "events" that were not directly related to the issues under study, but related to the study itself and to

possible resolution of civil rights violation found.

The study deviated from its design in many ways. To begin, it was not originally an unbiased study. The study had been suggested and begun for several reasons: changes in OCR's policy for investigation; changes in the manner in which school districts were to be studied (large-scale studies would be undertaken rather than responding to civil rights violations by following up on complaints); a need to draw attention to OCR's work to change its image; and the requests for a study of the New York City schools by the U.S. Commission on Civil Rights and by Senator Javits.

The study relied in part on political mobilization to promote and to assist its progress. The Review Staff, under the direction of Martin Gerry, attempted to build a political constituency among the interest groups to assist OCR when the findings were to become public information. The groups, in turn, helped OCR identify issues to study and to understand the schools' bureaucracy. OCR was also very selective in the groups they sought out for advice, choosing the pro-civil rights and advocacy groups rather than the groups that would be anti-affirmative action and a hinderance when the results became public.

Various mechanisms were used by both the Board of Education and OCR to drag out the study, such as time, legal cases, data findings, and political support. These factors were used to slow down the process in order to better present a position or to promote part of the process. This was complicated by conflicts over the definition of civil rights and the boundaries within which OCR could operate. This conflict was marked by several court cases, beginning with the issues over OCR's right to collect ethnic data.

In general, OCR had difficulty in conceptualizing the problem under

study. Issues were generated from previous legal cases on civil rights violations. These were sorted through with the assistance of the interest groups, who then added their own concepts of the problems. Later, OCR was willing to expand the study to include another area of concern, that of staffing and discrimination. Later, however, when the administration changed in OCR, the issues again were reordered in terms of priority. In general, the new administration lacked the interest to follow the case.

These examples illustrate how the process itself was a problem; the completion of the review alone was a hard-won outcome. The policy process itself and the issues of the policy can be viewed as separate processes or as a whole. Certain factors were brought together because of history, definitions of behavior and organization as established by law, decision-making framework, and organizational processes. The outcomes are the policy artifacts. These factors vary according to the personal qualities of the individuals and the leadership of the organization. The study reveals the internal as well as external dynamics of the process. Certain factors had more bearing on the outcomes than others; some factors prove to be predictors of what can be expected to occur or the causes of what will occur. Thus, the questions become not only how the events came about as they did, but also how one circumstance lead to another as the study and resolution progressed.

Chapter 13

ANALYSIS OF THE POLICY PROCESS

As was noted in the preceding chapter, several factors complicated the investigation and negotiations surrounding the issues in the New York City Review. These factors are the substance of the following analysis. The focus of this analysis is on understanding how these factors changed the policy process and created the resulting impact. The analysis is organized into three areas: context, roles, and process.

Context

The context for a policy process is the setting of the policy and of each organization involved. This includes the physical as well as abstract parameters of resources, time, history of events or persons, political and organizational climate, and the wider social system values and rules. They serve either as the boundaries to a policy or as impacts on the policy process and outcomes. The following examines how these elements impacted on the policy process of the case study.

Attributes of an organization become part of a policy process if they impact on the process, serve as boundaries, or are used as tools for affecting the transformation of the policy process. Sometimes OCR demonstrated its willingness to work within their time-line boundaries established by Adams v. Brown cases, when necessary (such as when David Tatel moved to an administrative hearing when the Board of Education had not completed the negotiation process over Letter Two, Revised) or to re-establish the time lines through court appeals (e.g., when OCR wanted to reinvestigate Letter Two, and needed more time to accomplish this task). Time and resources were not so much hinderances or limitations to the possible development

of policy as they were useful in defining the development, such as the avoiding of issues or forcing the resolution of issues.

Values

As was underscored by many of the policy theorists values and norms are important elements in the transformation of the policy process. Values and norms serve as regulators of its system and as the motivation to act upon concerns or events. According to Gergen (1968) the transformation of policy depends upon an individual's (or organizational subunits) willingness to act from a particular "leverage" point. This willingness to act depends upon that individual's evaluation of the issue and the degree of positive or negative reactions. In this case study, two types of values exist: those that represent the shared norms of the organization and individuals in the policy process and those value dispositions that are a result of the issues or circumstances of the policy process. There is a need within organizations to have shared norms and co-operation in carrying out its functions. A lack of shared norms can lead to conflict as the organizations carrying out tasks, making decisions, or implementing change. The consistency of shared norms should not be assumed to exist within an organization; as is discussed in the next section, individuals and sub-units of the organization can operate independently and in conflict with the organizations if they do not share the values and are in a position to act upon their own values.

The other type of values evidenced in the case study were those created by the issues -- individual or agency reactions to issues which Gergen (1968) refers to as issue evaluation -- or created by broader social problems, but become manifested in specific issues. Both organization-generated value dispositions and issue-generated value dispositions have possible time

context -- current and historical. A current 'evaluation' of an issue would be to place it within the context of what a person or organization is currently doing or the kinds of problems that currently exist. For example, the OCR Review was not New York City Board of Education's only pressing problem. It became more pressing and necessary to resolve when millions of dollars in federal funds were about to be withheld. This money was needed to reinstate teachers laid-off because of the fiscal crisis.

The 'evaluation' of a current issue can be influenced by an individual's or organization's past experiences with similar issues or the evaluation could be influenced by the perceived context within which an issue might be placed and the value-reaction (positive and negative) that results from this perceived association.

This policy process contained both reactions to current issues and to their perceived relationship to other historical problems. The review itself was based on civil rights, historically, deeply controversial both in New York City and as a national issue. The review of civil rights violations and the subsequent identification of issues touched upon many deep-seated management and educational problems in New York City public schools. Reactions to the investigation and the findings were both immediate as well as couched in the perceptions of their relation to other problems.

The preceding chapter's discussion of issues illustrated the combination of immediate conflict and indifference over certain issues. For example, the Title IX issues did not generate as much reaction as did the Title VI issues and therefore were resolved more easily with less controversy, even though some of the findings were dismissed.

In general, however, the Review and many of the findings created heated

conflict and indifference over certain issues. For example, the Title IX issues were of less concern to the Board of Education than were the Title VI issues and therefore were resolved more easily with less controversy or some of the findings were dismissed.

In general, however, the Review and many of the findings created heated conflict often because the different sides (OCR, Board of Education and the interest groups) were reacting to the issues in light of past problems. For example, the employment practices issues touched off the old issues of centralization and decentralization of hiring and assigning staff and the general complaints about the management problems of the Board of Education and the Board of Examiners. The Deputy Chancellor used the Letter One response to redress certain Board of Education teacher selection and hiring policies. In developing the response for the Board of Education he attempted to force the Board of Education into selecting his preferred redesigned method of hiring staff.

The investigation itself touched off two other historical values conflicts including that of local control of education and of ethnic politics. In New York City, both conflicts are closely related and have served to divide the districts and the city on policy matters. The strain for local control between the Central Board of Education and the local school districts, dates back to the tumultuous period of the 1969 teacher strikes and community protests. This division was clearly illustrated in the case of Community School District #26 where the Board of Education decided not to apply for federal funds for minority children, because children from other districts would be the ones to benefit. Many districts acted independently of the policies of the Central Board of Education, as illustrated by the resistance of some school administrator to complete the ethnic surveys, or in the action of one superintendent who had requested OCR investigate possible

discrimination in the NYC schools. The concern over how education should be controlled in New York City, therefore, arose again as plans for resolving violations of civil rights were being developed. Again, there was pressure by the UFT for centralized hiring systems to control those who would be brought into the system as staff.

The other sensitive area was over the civil rights and particularly the identification of racial types, as part of the investigation. In New York City, ethnicity has had a strong social and political function in terms of the prevalent social structure and in terms of the rights relative to other groups. New York City has also historically been diverse both racially and ethnically; the various groups have each experienced various forms of discrimination. Currently the groups have been able to obtain different degrees of rights and privileges as they have assimilated into the majority culture.

This history created a problem in the review because OCR and the administrators of New York City schools had very different views of race, ethnicity, and discrimination. As one Board of Education administrator commented:

Someone asked me, don't I get insulted by OCR and I said no. So that's an important factor, because they meant that the way in which the report was handled down was designed to generate racial and ethnic hostility. (Summer, 1977)

The narrow definition of what does or does not constitute discrimination, based on the civil rights regulations and precedent court cases handicapped OCR. OCR limited the distinction of minority and non-minority primarily to the black population, although with some exception for the National Origin Minority Students. Other racial or ethnic groups were not protected.

This created a great deal of concern and hostility. As the Deputy Chancellor described during a verbal analysis of Letter One:

OCR is used to dealing with a model of discrimination where you've got whites, largely homogenous, whose behavior in the past has resulted in the direct repression of Black aspirations. In New York you do not have that kind of model. You have many people in New York who themselves feel that they are part of an oppressed group. There are many poor ethnics in this city. They feel that they are victims of Americanisms other than racism. It is important to put that in because I think it is something that OCR is not used to dealing with. It may be very well to have to be the case that after we finish with district court we might get a new kind of sensitivity in dealing with the problems. (Feb., 1977)

Much of the reaction over this narrowness in definition of who can be protected from discrimination created hostility because many individuals and groups thought they too were part of a minority group which had suffered discrimination. Because of historical ethnic group experiences with discrimination, especially the Jewish ethnic groups, these groups were sensitive to threats of policy which currently afforded their group advantages or at least equal opportunities. For instance, the Jewish groups and many of the school administrators, (most of which were Jewish), were strongly in favor of the merit system of access to teaching and administrative positions. On the other hand they were against a quota system and any ethnic identification; it was their reasoning that this would provide some groups with a greater advantage than others, simply because of their race or ethnicity.

Thus, the perception of policy issues and their relationship to both current and historical problems serve as the catalysts for actions taken. As Gergen (1968) points out, however, value dispositions are only one aspect of the combination of elements that impact on policy transformation.

History

Part of an organization's and individual's value disposition are established by their historical experiences. History of the agencies and the issues was an influencing factor in the course of policy development.

Past inter-agency relations or policies on issues were forecasts of how these same agencies would react to the issues and the other agencies and were to contexts in which the individuals or agencies would "evaluate" and issue or experience. Several historical problems of the Board of Education delineated some of the critical issues that would more likely have impact than others raised by OCR's letters of findings. In fact, some of the arguments around the new issues as framed by the historical issues became reworked and recasted. For example, although the OCR issues did not incorporate the centralization/decentralization issue, the resolutions of the civil rights violations were viewed, by interest groups and Board of Education officials, as directly related to this previously compromised controversy.

In addition, an agency's past experiences in handling a similar problem predisposed them to ways of handling the current problem. Therefore, OCR was more likely to view its negotiations with New York City in reference to its civil rights negotiations with other cities, such as Chicago; whereas, the Board of Education was more likely to view its negotiations process with OCR in reference to other government monitoring agencies, city, state or federal bureaucracies or in reference to other criticisms and bargaining situations in which they had been over other problems. In the negotiations of Letter One, OCR tried to resolve the civil rights violations in light of the regulations and the relative court decisions. Not all of OCR's attempted resolutions were feasible, such as requiring that the teacher examinations had criterion-reference validity. The Board of Education tried to resolve the issues in light of what was feasible, both administratively and politically.

In some instances, sensitive historical problems were symbolically manipulated to develop political support for or against aspects of the OCR

for resolutions of the letters of findings. For example, Moynihan made references to the Nuremberg laws when he attacked the New York City plan for teacher assignment. This political analogy sensationalized an already sensitive situation of teacher distribution and created new interpretations of violations of rights, by inferring that identification of individuals by race or ethnicity will only lead to larger more personally threatening problems.

In summary, when issues are couched in their agency or social history this perspective can lend insight into how these issues are interpreted by the agencies and how the agencies might be handled than aspects of policy changes. In turn, this historical background can be manipulated to create or reduce political support by purposefully using it to resolve previously unresolved issues.

Control Mechanisms

According to Gergen (1968) not only leverage points in the process of policy formation an individual (or organization) has a varying number of resources available. Besides time and money, there are also the factors of sanction and control. In this case two forms of sanction and control mechanisms were used to define the policy context and to alter the context whenever possible. These include the use of statistics, a technical mechanism which defined the existence (or lack thereof) of civil rights violations, and the use of the legal context, which defined what legally constitutes a civil rights violation and defined OCR's role in regulating these violations.

Statistics

In this case study, numbers both defined the nature of the civil rights

issues and were used as a means of arguing these issues. The OCR Review and the conclusion of the existence of civil rights violations were based on the collection of statistical data about various aspects of the New York City schools. New York City has the largest school district in the United States, however, making data collection of this nature a different task to undertake. The size and nature of the school system created problems for OCR's investigation by complicating the development of a research design to encompass means to control possible problems, the efforts to collect complete or representative data, and the analysis of data collected. In turn, OCR tried to build a case of civil rights violations; the adequacy of the descriptions of civil rights was based on the quality and the analyses of information collected.

Two types of statistical information existed: the potential situation of students or staff in relation to issues of discrimination and the described situation, by OCR's collected descriptive data. OCR had difficulty in attempting to 'describe' the 'potential' problems that existed in the New York City schools, because of the resistance to data collection and the formidable task of statistically describing possible civil rights violations of this setting.

Statistics were used in the two letters and in the responses from the Board of Education to make points in defining the existence of a civil rights issue or problem. The Deputy Chancellor's office reanalyzed the data collected for Letter One before accepting OCR's conclusions of school system violations. In response to Letter Two Revised, the Board of Education recollected the ability grouping classroom data to prove that OCR had miscollected misinterpreted these data.

On occasion, numbers were used to imply a civil rights problem existed. An often argued about example of this was the illustration of the proportion

of minority teachers in the school system. This ratio was also compared to similar ratios of other major U. S. cities, in which New York City had the widest discrepancy of these two proportions. The point of this display, however, was to imply that New York City lacked minority teachers and that the Board of Education must be discriminating against minority teachers because of the size of this disparity of the two proportions relative to that of the other major cities. The Board of Education took issue with this illustration and the implications although the Deputy Chancellor had used this data display tactic in one of his working papers to the Board of Education.

Depending on the position of an agency in arguing a particular issue, statistics were used to illustrate a case or to prove a point of fact. This was a technically complex resource (either the technical statistical knowledge or the data bases) most of the interest groups lacked; resources were limited to the Board of Education and OCR to use in arguing and negotiating the existence of civil rights violations.

Legal Context

Legal aspects were part of the OCR Review, both legislatively and judicially. Like statistics, the legal aspects of this case study were used to define the context of the policy process and as resources to create or to argue the violations or the course of the events of the process. The basis of OCR and its investigation of New York City were the Civil Rights Act of 1964, its amendments of 1972, and Section 504 of the Rehabilitation Act, jointly protect the civil rights of individuals regardless of race, sex, or handicap, respectively. Legislative facts, however, are not sufficient to protect the rights of individuals, especially those of a minority group.

Under these circumstances the courts become involved in defining and upholding rights more specifically. In this case, the legislative process only served to define the setting for OCR's investigation, OCR's legal responsibilities and OCR's rights within the federal education policy process. The legislative process interrupted the OCR Review only once, when Secretary Califano signed the regulations of P.L. 94-142 which described what school systems must do to provide adequate services in educating the handicapped. This occurred at the time Letter Two was being recalled and reinvestigated, and therefore broadened the issues covered by Letter Two Revised.

Besides defining the area for civil rights regulations enforcement, the legislated civil rights regulations provided OCR with mechanisms for enforcing compliance; OCR can ultimately request that federal funds be withheld from non-complying school districts receiving federal aid. While some educational policy objectives can be achieved through the use of incentive of grants and aid, enforcement mechanisms limited to the termination of funds are a very weak leverage at best. In general policies concerning fund termination are ambiguous and difficult to use; as Levin (1977) explained:

Some statutes terminate all federal funds; some just eliminate further payment of funds under the particular Act in question; some occupy a middle position. For example ... the sanctions for violating the provisions of Title I of ESEA are that no further Title I payments will be made. The same is true of the Emergency School Aid Act, which provides that the ESAA funds are to be terminated. [p. 3]

Moreover, these enforcement mechanisms are seldom involved because this action is "often injuring most those the legislation was designed to help" (Levin, 1977, p. 3).

The effectiveness of change initiated by Letter One and Two depended in part on the threat of federal fund termination in New York City schools

because it was the only source of authority OCR had. OCR eventually did withhold some of the ESAA funds the New York City Board of Education was to have received, while some of the negotiated agreements were being followed up. Yet, OCR received little support from the new federal executive administration in using the penalty to enforce civil rights in New York City. The judicial process proved to be more flexible and was used more readily by all policy process participants to regulate the policy action outcomes. Court cases heretofore had helped to define the specific limitations and uses of the civil rights regulations. They had provided the substantive definitions for identification of civil rights violations and helped to clarify how civil rights are to be protected. These cases, along with the civil rights regulations, served as a basis for OCR's investigation of New York City and the identification of issues (as noted in the issue-related citations in the letters of findings).

Of the major areas of judicial involvement in education policy, two areas illustrate the specificity of Judicial clarification of civil rights and the provision of educational services. Levin (1977) summarizes these two areas as:

- 1) Equal Educational Opportunity for Pupils with Varying Needs
A number of cases have implied that educationally disadvantaged students are constitutionally entitled to some form of 'compensatory' education. Mentally retarded students are seeking education 'appropriate to their needs' and 'linguistically' handicapped students want the state affirmatively to overcome their language deficiencies. /p. vi/
- 2) Race and Sex Discrimination The difficult questions in the desegregation area are those concerned with the nature and the extent of the remedy ordered, and with resegregative practices such as ability grouping and the selective use of disciplinary measures. /p. vii/

A third area can be added and the issue of reverse discrimination, as illustrated in the Bakke case which raised the question of rights of the 'advantaged' as affected by affirmative action policies was being developed

at the time of this case study, These areas and the legislated acts framed the focus of OCR and boundaries of OCR's investigation.

Other cases entered into or cited during this case study were used to define the nature of possible civil rights violations found, or to counter-argue conclusions based on particular case definitions. The first type were those cases which criticized how OCR did its job -- either its discriminatory focus or its negligence in the speed in which it completed compliance or enforcement studies. For example, the Adams case order OCR to move forward in the review and the summary analyses and established time lines for OCR to complete compliance reviews. These kind of cases existed similarly for which the Board of Education criticizing how it carried out its job such as the cases about job selection examinations, the provision of educational services, and the staff lay-offs. These cases also illustrated the lengths to which interest groups would go to obtain and realize their "rights". Conversely, other cases (such as the Caulfield case) illustrated the degree to which interest groups and individuals would go to protect their rights.

The second type of cases were those used to substantiate or develop arguments on a point of law to influence the course of events. These cases served as a basis for clarifying what actions an agency could or could not take, to illustrate the validity of an argued position, or to illustrate the way in which policies can be designed. Cases were commonly used in this manner when OCR cited violations of civil rights in the letters of findings. They cited cases to illustrate their position. The Board or Education in responding to OCR's letters used other cases, as they developed arguments for their own position. One court case commonly used for this purpose was Griggs v. Duke Power Co. OCR used it to delineate what the Board of Education should have done in designing a staff selection

procedure in light of civil rights violations. The Board of Education debated the issue of whether or not OCR could make a case of civil rights violations solely on the fact of impact as argued in the Griggs case; or, if in fact OCR needed to find the Board guilty of intent to discriminate as well as in the case of Washington v. Davis.

The third type of cases were those centered into as an action to change the course of events in the policy process. Individuals and agencies used the courts to stop or to encourage actions they favored. This was done either through class action suits, individual court cases, intervening in on-going cases. The practice of presenting briefs was used often during the Caulfield case by interest groups for and against the plaintiffs.

Changes are not always guaranteed with legislation or court cases. Like legislated decision, judicial decisions "cannot be made effective without the support of their elements within the political system as well as that of the dominant interests within society" (Zeigler, 1965, p.209). Judicial decisions are subject to the pitfalls common to implementation of policy as evidenced by examples from the case study. Both the Adams and the Brown cases were attempts to coerce OCR into carrying out its responsibilities. Although the court orders which resulted from these cases established time lines and work to be fulfilled for OCR to carry out its responsibilities, the agency would appeal these requirements to adjust them when necessary as OCR would often do.

Most of the literature on organized change and implementation have emphasized the importance of the context in conjunction with the organization(s) involved and the policy involved as determinants of the impact on the outcomes. The context, as described in this analysis, represents both the environmental factors that establish the setting and boundaries of the policy process and the resources available to impact on the transformation of the policy process. The degree of their importance within this process

does depend on how much impact the environmental factors have and the degree to which the individuals and organizations in influential positions make use of the resources to have impact.

Roles

"Roles" refers to the behavior and actions of the individuals and organizations involved in the policy process. Organizations include the full range of size and type, from major bureaucracies like OCR to small advocacy agencies and temporary groups such as the Chicago Team. Each major organization is examined on several characteristics: the type of organization, its purposes and tasks, its assumptions for action, and its values as an organization. Individual behaviors and interest groups activities are likewise characterized. While individuals and the interest groups do not function as large organizations they have behaved in identifiable ways such as to have impact on the process. These characteristics have had the outcomes and the general scope and sequence of the process. Each organization is examined in terms of its relation to the issues of the NYC Review and of the general problems directly or indirectly related to the review issues by events that took place within the review process or because of more general social events (e.g., the Presidential elections which shifted the administrations). Finally, this issue-related examination includes each organizations, and interactions with other agencies according to their role in their combined perspectives and the outcomes of the process.

Gergen (1968) in his discussion of leverage points in policy formation, suggests that the dynamics of policy development created through the combination of social system subunits -- persons or organizations -- from their particular vantage points as related to the importance of issues for these persons and to the resources that are available and can be used for leverage. while this discussion of roles is not limited to Gergen's discussion of leverage

points and policy formation, his conceptual framework is a useful model to acknowledge the relationship of these elements and to describe similar relationship of these elements found in the case study. Similar combinations of dynamic relationships existed throughout the policy process.

The elements of persons, organizations, and issues were found to be systematically related; these relationships can be correlated with impacts on the development of the policy process and the outcomes. Underlying this perspective and analysis is the assumption that through identification of the elements and their characteristics the seemingly irrational and complicated aspects of the process can be untangled and can be reconstructed in a more rationally analyzable perspective.

Characteristics of the Organizations

Different theorists have described the importance of organizational characteristics and the issues within a policy situation -- decision-making, implementation, or policy formation. This discussion covers behaviors and outcomes of the entire policy process; while these theorists limited their focus to one phase of the policy process, their focus will be extended to the entire policy process in this discussion. Van Meter and Van Horn (1975) have emphasized the importance of the characteristics of the implementing agency as elements of impact for the implementation process. Their framework which includes attention to the following elements: formal structural features, informational structural features, resources (time, money, etc.) and their linkages to other participants in the policy process -- is a useful starting place to be examined in discussing the characteristics of the organizations in a policy process. Just as certain characteristics have greater impact at the implementation level, there are certain organizational characteristics which have had greater impact than others in the

transformation and outcomes of this process, either in particular situations or throughout the process.

The formal characteristics of an organization include 'age', size, and purpose of the organization. In this case the older the organization the more linkages the organization has with other agencies (both formally and informally) and the more established the organization was in its manner of handling certain policies or criticisms. The Board of Education, for example, is an old bureaucracy with a long history of controversy. Its size only added to its resistance to change. For example, the Board of Education would periodically encourage the New York senators to intervene and stop the investigations, adding pressure to OCR's Review.

These characteristics complicated the identification of issues process for OCR, because so many of the review issues were closely related to controversial problems in New York City. For example, the dual hiring system, which OCR found to be discriminatory, had been developed to increase the number of minority teachers in minority schools as a result of the community control/decentralization controversy of 1969. The issue of centralization and decentralization of the management of city schools is one example of a long battled concern among the various interest groups and community groups and the Board of Education. These old unresolved problems colored the problems of discrimination. In addition, the Board of Education would keep in mind what the concerns of the various interest groups would be, in light of the Letter One and Two issues.

The function of the organization was both the reason and a complication for its involvement in the policy process. OCR's role as a regulatory agency was not a welcomed one, especially since its area of enforcement was a politically-controversial field -- civil rights -- as well as one

which lacked clearly defined goals and objectives. The development of an agenda and the subsequent carrying out of these activities have been OCR's two most difficult tasks which complicated the New York City investigation. The Board of Education's purpose, the provision of educational services, was equally controversial. As with civil rights, quality of education is difficult to assess. The delivery of educational services led to the controversies of quality and equality of distribution throughout the New York City schools, as noted by the decentralization controversy and other controversies over the rights of individuals to an education. The court cases in this study, plaguing the Board of Education -- Rubinos and the Chance cases criticized the Board of Education staff selection policies and the Hart case (Mark Twain) criticized the Board of Education desegregation policies -- like those plaguing OCR -- the Adams and Brown cases criticized OCR for inefficiency in the delivery of services -- illustrated the severity of controversy over management and rights.

Typical organizational problems complicated the difficulty OCR and the Board of Education had in carrying out their functions. This included OCR's and the Board of Education's inefficiency in carrying out its own tasks -- as the above criticisms describe -- their poor leadership, and the lack of clearly defined policy directives; these clearly impacted on the transformation of the policy and outcomes of the review. OCR's problems with leadership stemmed from a high turnover of directors which usually precipitated a reorganization of the agency and its policies. The uncertainty that pervaded the agency when this occurs impeded investigation efforts. For example, shortly after Gerry released Letter Two and was dismissed as Director of OCR, Al Hamlin served as acting director until late spring 1977, when David Tatel became the new director. During that spring, little was done in the agency because

of anticipated organizational changes. In addition, it took Tatel several months to design a new management plan and to put it into operation. The negotiations with NYC over Letter One did proceed, however; a new OCR team was pulled together to handle this.

The lack of consistent leadership also existed outside the agency. The Secretary of HEW did not maintain a consistent strong position on enforcement of civil rights or on the mechanisms to enforce civil rights. Federal officials, such as Senator Moynihan, spoke against the plans to resolve civil rights violations.

The lack of clearly defined policy directives ranged from no regulations in an area protected OCR to very ambiguous regulations that were not specific enough for day-to-day school operations. For example, the regulations for district compliance on the provision of services to the handicapped were still awaiting for approval when OCR sent Letter Two (educational services) to the Board of Education, although in addition of these regulations, OCR had collected data on the provision of services to handicapped students in New York City.

These problems -- lack of clarity of objectives, poor leadership -- were complicated by other organizational problems, such as the lack of resources, and other pressing social problems. In combination they affected the way an organization would carry out its responsibilities, or, in the case of the Board of Education, would respond to pressure.

The most severe resource problems for OCR were the lack of professional expertise, the limited scope of previous investigations of southern schools, and the kinds of people who are attracted to civil rights enforcement. All these problems left OCR ill-equipped to handle the technical complexities involved in conducting a compliance review of New York City. Even with the use of outside technical assistance, the Review staff was not prepared to

begin to define what contributed civil rights violations in northern schools.

While the Board of Education also had leadership problems (turnover in administrative officials), the Board had other concerns besides OCR's actions. One pressing concern was the City's fiscal crisis and the resulting staff layoffs at the Board. The Board was also a party in the New York State school finance case, and a scandal had broken out around the school custodial workers.

Role of the Individual

Individuals had a tremendous impact on this process -- from the former Director of OCR, Martin Gerry, who initiated the case and who remained involved long after he had no official capacity to do so, to those who carried out the policy directives contained in the Memo of Understanding. Individual behavior varied to the degree to which these individuals valued a task or the agency's responsibility in a particular situation and could have influence within a situation. Some actors carried out their roles of the UFT or Irving Anker, then-Chancellor of the Board of Education.

Some individuals influenced the process by deviating from the norms of their organizations. In some cases they would still be consistent policies of their organization. For example, Amy Lewis* and Karen McKenzie* worked on the OCR investigation even after their director and close working colleagues have been removed from OCR. They later remained involved even when they were moved away from the investigation. Lewis* maintained close contact with the interest groups even after it was made clear that she was jeopardizing her job by maintaining this "unorthodox" relationship.

In other cases they would deviate from the established policies of their organization, as motivated by the strength of their reaction to the situation and what they viewed as necessary. The way the Deputy Chancellor handled the Board of Education's response to Letter One is an example of this. Mindful of the Board of Education's probable reaction to the OCR

identified violations, he still tried to promote changes in the Board of Education staff access policies as part of the response to Letter One.

Not everyone was working toward accomplishing the purpose of this Review. Some tried to thwart the outcomes. In one extreme case, a principal agreed to go to jail instead of completing an ethnic survey on his staff, because he viewed this task as a violation of his and their individual rights.

There was more task identification than group identification among the individuals in this study, especially when an agency seemed uncertain about its position on the policy issues. The organizational uncertainty allowed for this independent behavior and discretion. Even when individual actions are not consistent with the norms of the organization these individual action should not necessarily be viewed as deviations. As Downs (1966) stated:

Not all informal structures and procedures arise because the members have different goals from the formal system of the organization. Some information devices spring up as means of implementing the organization's goals by filling "gaps" in the formal rules, or adapting those rules to fit peculiar situations [p.63.]

Particular individuals stand out as influentials within this policy process, although they might not necessarily have had the authority to do so. When the individual behavior is viewed as a combination of task identification, and organizational responsibility and position within situation, it is evident that personal qualities and value dispositions are what makes the difference in how they try to promote or to stop particular outcomes. In some cases the individuals would use his particular position to promote the direction of an outcome. Senator Moynihan although not directly involved in the negotiations between OCR and the Board of Education spoke publically (in the Senate) and with value - laden emphasis against the policies to

bring about the negotiated policy changes. In other examples, the individuals, like organizations can be viewed in terms of their history of value orientation and direction of responding. These orientations combined with their expertise and resources within a given situation permits them the necessary leverage to have impact on the outcomes. (Gergen, 1968)

Interest Groups

Interest group involvement is very similar to that of an individual. They have particular value orientations and try to develop leverage within another organization to influence change. In this case, the interest groups represented a wide variety of concerns and were a major force in the course of the policy process. The diversity of these groups is related in part to the diversity of ethnic and racial groups in New York City. The interest groups were from both New York City and Washington, and represented a wide range of interests and backgrounds. Some were racially based -- NAACP, Puerto Rican Legal Defense and Educational Association. Some were religiously or ethnically based -- American Jewish Congress, Anti-Defamation League. Some were ideologically based -- Public Education Association, American Civil Liberties Union, Advocates for Children. And some were politically affiliated -- Republicans, Democrats (loosely organized), and the Wednesday Club.

These groups varied in their interest, participation, awareness of the political process, and organizational complexity. For example, Advocates for Children maintained both national and local contacts on issues related to the discipline and suspension of students. The United Federation of Teachers focused on the New York City teachers and the quality of their jobs. The groups have both long- and short-ranged goals.

Many of these groups had worked for a long time in the area of education and for the changes they wanted. Those groups that were invited to assist OCR in the development of the issues welcomed the opportunity to work with

OCR. Some of the issues that were finally studied were old concerns of these organizations. The ideologically based interest groups, however, were more actively involved than were the minority or politically based interest groups with the review issues throughout the entire process. The civil rights and advocacy agencies were more likely to be allied with OCR, in part because OCR was working toward policy changes consistent with the changes these organizations were trying to create. The more conservative agencies would align themselves with the Board of Education or simply against OCR's interest to change civil rights problems in New York City.

The review and the subsequent negotiations served as potentially significant mechanisms for the interest groups to influence changes in Board of Education policies. These agencies could only influence policy; they could not control or change policy directly. In this case, the two bureaucracies -- OCR and the Board of Education -- are public agencies. These interest groups were one faction that would attempt to hold these bureaucracies accountable. The use of influence to change policy is volatile and difficult to regulate. As Zeigler (1965) pointed out:

Without access to administrative machinery it is very difficult for interest groups to influence decisions. Organizations which find their interest affected by the policies of administrative decision makers, but which do not receive the benefits of a factorable bias, may seek satisfaction for their demands elsewhere within the political system [p. 63]

Influence can be used when an interest group has the support of an influential politician, informal contacts with sympathizers within a governmental agency (such as the Review staff contacts with the New York City interest group members), or can influence who will be appointed to a top agency position (such as the appointment of David Tatel, formerly of the Lawyers Committee, as director of OCR).

An agency's ability to influence alters when another organization's structure or staff changes. Both OCR and the Board of Education underwent major administrative changes. Many of the interest groups had developed strong informal communication systems with various organizational levels of OCR; the reorganization of staff all but destroyed these linkages. As the policy process moved to the negotiation phase and the administration changed, the interest groups were no longer kept informed about the policy, having lost their contacts within OCR. The changes in leadership, however, afforded the interest groups the opportunity to develop new contacts and to influence the selection of more sympathetic leaders.

Agencies can also influence bureaucratic policies through persuasion. Interest groups can influence bureaucrats by making available resources such as knowledge about a problem, technical expertise, general information, or experiences. This method was often used in this case. For example, the Chicago Team sought the assistance of the Public Education Association to re-examine the findings of Letter Two.

The judicial processes is also a means of influence available to interest groups. To some degree, the legislative process can be used in this manner, although it is not as sensitive as a mechanism for change as is the judicial process. As Zeigler (1965) noted, "groups which have been almost powerless at the legislative level of the political struggle are sometimes able to achieve success before the courts" (p. 199). Thus, it is not surprising that many of these groups sought and achieved policy changes through the courts -- as evidenced by the Chance and the Adams cases. Even if the interest groups could not influence legislation, they did nevertheless try to influence the legislators, as exemplified by those groups that sought the assistance of state and national politicians to intervene in this process.

The interest group used a combination of influence and pressure tactics -- conducting studies, writing letters, holding conferences -- to direct the outcomes of the OCR investigation and the subsequent negotiations. One of their best tactics was to combine the efforts of several interest groups in a particular area. Such inter-group relationships were very common both in New York City and in Washington. They were either formally organized -- the Leadership Conference on Civil Rights -- or informally organized -- the lawyers for the interest groups involved in the Rubinos case. The interest groups had their own agendas and policies they wanted to promote which coincided in part with OCR's review. Different groups would be involved with and be in support of different aspects of the review. For example, the Rubinos lawyers (each affiliated with different interest groups) co-operated with OCR in the investigation of Letter One issues. These lawyers had requested OCR's investigation of this issues for the same data collected for these issues would be useful for the Rubinos case. Moreover, OCR, in turn and with their assistance, investigated many of the same employment practice issues. These same lawyers, however, were not interested in the educational services issues of Letter Two, except if these issues co-incided with other focuses of their particular interest group or agency. Thus, the involvement of interest groups depended in part of the interest of the individuals or agencies, their vantage points for influencing the direction and outcome of the policy process, and the resources they used to accomplish this.

Organizational Dynamics of the Policy Process

The dynamics of the policy process are created by the relationship among the individuals (within and among the organizations involved), the issues, and the values of these issues in a situation. In some respects the organization's behavior and routines defined for the most part by the organizational characteristics and problems as described above serve as boundaries for an

organization's choice for action and decision-making within a policy transformation process. These can be translated more broadly as the boundaries characteristic of any social system, which include tendencies toward boundary maintenance, toward equilibrium and toward differentiation (see Chapter 2). Critical to this concept of behavior and routines are the shared norms of the organization. Inconsistent organizational behavior often can be attributed to a lack of shared norms or to disturbances of these organizational tendencies. Sometimes, too, organizations (or particular individuals) will make use of these boundary tendencies to protect themselves from change or criticisms.

Two such disturbances exist in this case study. The Board of Education was told, through a formal investigation, that their policies for employment and educational services would have to be changed to be consistent with the federal civil rights policies in education. The Board remained resistant until they were threatened with the loss of federal funds; even so, the Board agreed to the most change in areas consistent with their own directions for change or where the documentation of findings could not be refuted or argued. OCR, on the other hand, lacked the internal cohesion to carry out the review and negotiations consistently in part because of the problems of a lack of clearly defined policies and procedures. The new administration's policies, as defined by Tatel, were different than those of Gerry; the new administration was less severe on New York City than Gerry would have been.

Several consequences result in cases like this. In this case, informal system would form as networks among individuals/agencies to compensate for their own lack of resources (as in the influencing techniques and collaborative efforts of interest groups) or for the assistance the OCR review staff persons sought among sympathetic interest group members of informal organizations. In other cases, persons found the formal structure too ineffectual to achieve agency's goals they sought. Inter-organizational relations can be found at the

macro- or micro-organizational level depending on the issue and the vantage point of the linkages. The Deputy Chancellor and his staff reacted to the investigation from a liberal perspective that was inconsistent with the Board's policy-making style. The Deputy Chancellor's office through their own actions, attempted to force the Board into changing its staffing policies as a result of their review of the Letter One findings.

The Review Staff was given the authority to carry out responsibilities that were not consistent with their formal positions. Moreover, those who should have been involved in the Review according to their job responsibilities were not because it was thought they did not have the expertise to conduct the review. This system became complicated when Gerry was dismissed, because the responsibility for the Review reverted to those with responsibility, although they had not been involved in the Review at all.

OCR staff member made great use of informal ties with advocacy and civil rights groups to facilitate the development of the investigation and the outcomes of the negotiations. For example, the Review staff consulted heavily with the interest groups to define more clearly the issues to be investigated and to become more informed about New York City policies and about available data bases. These agencies also served as strong mechanisms for the issues and problems OCR studied.

The Board of Education also had developed well-defined relationships with various interest groups. Certain of these groups have a more direct relationship with the Board than do others; this was demonstrated when the Board, through the Deputy Chancellor's office, selectively sought input for the Letter One response from the major Jewish organizations and of the United Federation of Teachers. The Board also had connections with less conservative agencies, including advocacy and civil rights groups. They called on these groups for their interpretation of the ramification of the particular decision.

The existence of informal organizations as a consequence are discrepancies within formal organizations. These informal systems are often attributed to personal significance and power and an organizational design which tolerate this or are attributed to differences in the pervasiveness of standards and norms as carried out in an organization. Yet, the circumstances under which these informal organizations operate can describe problem within the formal organizations.

A micro-organizational perspective of the policy process illuminates the perceptions of local administrators about OCR's investigation and their attempts to thwart this, from their leverage point. While the central Board of Education cooperated with OCR's data collection efforts, several principals refused even after a court order required them to collect the data. In a related example, community school district #26 refused to apply for federal funds for a summer work program for minority students, although both the federal government and the Central Board of Education pressured them to apply for and to accept the funds. In part the perspectives of these local school administrators in these situations are very much like those described by Lipsky (1976) in his description of a street-level bureaucrat, and Berman's (1978) description of micro-organizational behavior during implementation. Although these analyses are limited to implementation, organizational problems are similarly related to the uncertainty of the policy or program outcomes, the limited time and information, and the significance of the administrators' routines. Additionally, the local administrators autonomy was being threatened. Their reactions in these situations can be attributed to their anticipation of the consequences of the situation, their own value disposition about these outcomes and the above described complications.

The combined relationships of issues and organizations and the value of the issues, complicated by the intra-organizational problems, are the leverages in transforming the policy. Most often there was not a direct relationship

among organizational characteristics, problems and the functions and outputs of an organization. For example, the process of regulating civil rights uncovered some of the problems that exist in inter-organizational relations, problems facing organizations being regulated, and other problems that may exist for both organizations. In turn, for these issues which are less controversial and more consistent with the organization being regulated, the less likely some of the other problems will be as several within the regulatory -- inter-organizational relationship. An example of the inter-relatedness of issues and problems is the nature of civil rights problems in New York City, city-wide fiscal problems and OCR's difficulty in diagnosing violations of civil rights.

Civil rights in general is a sensitive issue in New York City, where various ethnic and minority groups jockey for jobs and social benefits. With this historicalness certain OCR-identified violations were resolved more easily than others. Yet the problem of resolutions was complicated by the fiscal crisis and the subsequent staff lay-offs within the schools which altered New York City's minority staff representation. These lay-offs affected the controversy over whether the schools should be centralized or decentralized because staff were laid off by reverse seniority and excessed teachers were moved from district to district. In addition, these lay-offs aggravated the concern for minority access to staff positions and promotions. The OCR findings and the push for resolution demanded attention to these sensitive concerns.

The relationship of shared norms within an organization (or among as the case may be) and perceptions of issues can be related to the outcomes of a policy process. The lack of shared norms within an organization can promote (or be affected by) problems in leadership, communications, and the use of resources. As noted at the micro-level of the organization, it led to

uncertainty and independent behavior, such as the existence of informal organizations, and will affect the outcomes of policy transformation, negotiations, or implementation. The greater the conflict over issues, the more severe are the problems that result.

The final outcomes of the negotiated Memorandum of Understanding is such an example. Only a few OCR and Board of Education officers were involved in the negotiations; both sides were working toward difficult outcomes, and as with Albert Shanker of the UFT, were barely co-operating with these. Although a plan had been negotiated, the controversies were not been resolved. The newspaper reportings and Senator Moynihan's accusations highlighted the worse fears that existed over OCR's investigation of New York City schools -- that selective observation of civil rights would be observed. Some community school districts continued not to co-operate with a plan that had been negotiated for the entire district. The Caulfield case was a result of this extreme conflict over the outcomes of the negotiations. The organizations (OCR and the Board of Education) vacillated in the manner in which they would respond to issues. When Letters One and Two were presented to the Board of Education the Board's response was very conservative. They did, however, follow-up on some of the issues raised in Letter One and Two during the negotiations of these letters. Many of these issues were related to other Board problems; these issues fell in line with change efforts the Board had been promoting. For example, the Board had tried to change the state law policies for hiring teachers by eliminating the rank ordered lists. The Memorandum of Understanding had recommended similar changes. If the Board had wanted to maintain a conservative stance they could have continued to argue the issues or gone to an administrative hearing to prove the actual violations, which they did not do.

In summary, the relationship of issues and organizations only affected

the policy outcomes when individuals (or organizations) could act upon their value-dispositions because of their resources (through forming informal networks or enlisting the aid of judicial or political assistance) or because of their positions in formal policy making positions or influential positions. The value-dispositions of individuals and organizations serve as strong predictors for actions within the policy process. As noted throughout this discussion, their "dispositions" are a result of basic values as well as perceptions about outcomes, past experiences (history) and current organizational problems.

Process

Within the complexity of the policy process itself are identifiable certain relationships, patterns and tendencies of action. Some of these processes are as simple as the existence of formal and informal relationships among individuals and agencies, and as complicated as the impact of symbolic issues on the actions and outcomes of the policy. The premise underlying this is the assumption that processes such as these do not result by chance although they may not necessarily be a product of design. Process is the action or sets of actions that transform a policy from one point to another as a result of the interplay of individuals, organizations, issues and the overall context for these.

Organizational Networking

Throughout the study individuals and organizations would combine efforts (i.e., form linkages) to create more impact on the outcomes of the policy process. These relationships can be described as organizational networks; networks refer to system of interorganizational relationships for purpose of exchanges. According to Levin and White (1961) an exchange would be

any voluntary activity between two organizations which has consequences, actual or anticipated, for the realization of respective goals. Elements exchanged are usually clients, labor services, or resources - the exchange is contingent upon the accessibility of each organization to the necessary elements outside the system, the objectives of the organization, and the degree of consensus among the various organizations.

The linkages, noted in this case study, differed characteristically and for the reason they were formed. They ranged in their degree of organization or what Weick (1969) refers to as the degree of loose coupling which notes that they may be tied together weakly or infrequently with minimal interdependence. This concept of loose structure can be applied to a form of networks in which organizations collaborate in some manner to share a task or responsibility. The relationship could be for a single purpose or for a limited time, or could be more permanent, lasting a long period of time.

Some of the networks observed were very loosely coupled, based on a collegial relationship among individuals of different organizations, drawn together because of a common interest or sense of purpose. Such a relationship existed among the civil rights lawyers who entered into the Rubinos case together and who worked together to file and administrative complaint Cheese with OCR. They kept each other informed for the progress of the review and later of the negotiations, through their contacts with OCR, their assistance in the review, and contact with each other.

At the other organizational extreme were the very formally structured networks of interest groups, usually based on a common interest. The Educational Priorities Panel, in New York City, was made up of representatives of various interest groups throughout New York City, with common concerns over the New York City school system budget and the allocation of funds

to instructional services. A similarly organized group, the Leadership Conference on Civil Rights in Washington D.C. represented several agencies and as a group study the progress of civil rights efforts nationally. In both cases their combined efforts on issues provide them greater influence on the bureaucracies they attempt to monitor, than if each agency behaved independently.

Networks were formed based on the needs of the agencies and the commonality of their focus. Sometimes they would "couple" to work toward of common goal, although separately the agencies had different philosophies. This effort of cooperation illustrated by the two formally structured networks and by efforts made by Advocates for Children in seeking collaborate influence on the outcomes of Letter Two Revised. After Letter Two Revised was released and the Board of Education had began responding to it, their agency prepared position papers, in the form of a response the Board of Education and a summarization of OCR's issues, response and OCR's reaction which was sent out to a wide range of interest groups to stimulate reactions. After Letter Two Revised had been negotiated, Advocates for Children joined with several advocacy agencies to discuss with Martin Gerry possible legal actions that could be taken together up the negotiated plan. Sometimes coupling would occur to share resources or to exchange information or personnel. For example, the interest groups assisted the Review staff by providing them information or referring them to other people that would help them in carrying out the Review. In another example, the Children's Defense Fund "loaned" Greg Jones* to OCR to provide needed statistical advice on Letter Two. In both cases the linkages between the interest groups were weak, but through the exchange the interest groups were able to have more access to the Review process. Sometimes these coupling arrangement would be unidirectional. For

example, Carol Ziegler, PEA lawyer because of her familiarity with New York City Board of Education and their employment practices would often be called on by OCR officials for advice during the negotiations of Letter One; yet she was not able to find out the progress of the negotiations or the outcomes of Letter One until the Memo became public information.

Networks developed either over a particular situation or as a long standing relationship based on common philosophies or efforts over issues. The relationship among the Rubinos lawyers, who represented various advocacy agencies, was maintained as they focused on the progress of Letter One. Their common concern was over civil rights discrimination in terms of access to equal employment opportunities within the New York City schools thus their focus was easily transferred to the Review and its implications for their case. Some groups or individuals were involved in only one aspect of Review and their relationship was more temporary; an example was when the Board of Education sought input from the various interest groups and professional organizations in response to Letter One.

The networks varied according to the different issues of the Review process. PEA was the more generally involved organization as it was involved to some degree with networks concerned with the Letters of Findings. PEA was interested in the employment practices issues by way of their involvement with the Rubinos case, and, like Advocates for Children shared an interest in the educational services for handicapped children. Some agencies would only combine efforts with others over a particular issue of either Letters and usually because of the historical concern over specific problems. For example, ASPIRA was concerned with the issues pertaining to the National Origin minority students, while Advocates for Children was concerned with the discipline issues of Letter Two, but was interested in

a forceful resolutions of all the issues, while the organizations focused on the issues of Letter Two were less well organized than those concerned about the issues of Letter One, the groups were aware of each other and kept each other informed of developments in the investigations and negotiations.

As these examples have illustrated, the networks were not limited to the interest groups but included ties among the interest groups and individuals within the Board of Education and OCR. These relationships existed either as a collaborative effort or in an advisory effort. For example, as the Review was being planned, Gerry attempted to develop a strong interest group support in New York City to support the political ramifications of the Review and to provide advice on issues to investigate. Both PEA and Advocates for Children provided advice and education about the Board of Education to the Review Staff and later to the Chicago Team and the new administration of OCR even as Letter One was being negotiated. Often, these agencies served as informal experts on the problems of the New York City school system and the problematic policy issues. The Board of Education, also, would use these interest groups to gain their representative perception of the Letters One and Two and possible solutions for the findings. The interest groups provided more than information. When OCR needed assistance in developing instruments, Advocates for Children helped the Review staff to find a sympathetic school administrator to comment on the instruments and how they might be misinterpreted.

Some informal networking among agencies were a form of coupling based on friendships of persons in different agencies, such as between the Deputy Chancellor and one of the advocacy lawyers, or what would result as bureaucrats move back and forth among bureaucracies or interest groups (e.g., the Director of OCR came from the Lawyers Committee on Civil Rights.) In turn, these relationships and former agency experiences served as resources either

through knowledge gained in previous settings or through relationships maintained.

Role of Events

Within this case study there were significant events that would changed the configuration of activities and participants' roles. Gergen (1968) described these as one type of dynamic process of policy formation through time. "The configuration of leverage seldom remains static, and that the formation of public policy might best be characterized as process with continuously changing features." [p. 192] This same dynamic feature can be applied to all phases of the policy process. For example, before Letter One and Two were released interest group members could do little to affect the outcomes of these letters. After the letters became public information, the interest groups were able to use the findings to rally support for particular policy outcomes of these findings, to criticize OCR or to criticize the Board of Education for what had occurred or what may result. Relationships among individuals and agencies over issues changed with events. Before Letter One and Letter Two were sent OCR had a difficult time getting data and information. After these letters were released the Board of Education then had difficulty getting the same data information from OCR. The same change with event occurred for OCR's relationships with interest groups; before Letter One released, the Review Staff had a very collegial relationship with interest group members. After the administration changed and the two letters of findings had been released, OCR tried to enforce a more formal relationship between staff members and interest groups. Thus, as in these examples, the implications of certain events for successive actions can alter present relationships and activities.

Events also can become symbolic both by their implication and by the

activity they generated. Changes in events marked high points of activity and served as pivotal points for future events and as boundaries for the process. After the release of each letter the interest groups as well as the bureaucracies' staff would become more active in attempting to stop any anticipated undesired results or to promote desired changes. A great proportion of activity would occur at these points because the events created new opportunities for change.

Dynamic Processes

The dynamics of the policy process represent the action occurs in the development and implementation of the policy. The dynamics represent the observable patterns of action based on the combination of elements including issues and roles within the process.

Interrelatedness and Impact

In this case study, the policy thrust of civil rights became transformed into several competing issues through the review. The case was not just one policy question but several, within the context of one focus, civil rights. The issues became competing because most of these sub-issues had its own arena of interest groups, their concerns and support, and their relation to historical problems in New York City or in civil rights. The interrelatedness of these issues and these 'arenas' although creating more tension helped to resolve these issues more easily.

When the issues are consistent with that of an agency as was the issue of minority persons access to hiring and selection was consistent with concerns of several interest groups and the Central Board of Education the agency will collaborate with other agency to promote the resolution of the issues. Each agency had its own decision-making framework based on its purposes and history: OCR had the civil rights regulations and its past

experiences in negotiating compliance plans; New York City Board of Education had its own problems with competing interest groups and historical means of analyzing policy problems. These frameworks served to sort how the issues would be resolved and the manner in which they were resolved.

Life Cycle Process

The life cycle of the policy investigation and resolution, and the life cycles of individual careers within the agencies were two life-cycles noted in this policy process. The life cycle of the investigation could only proceed through the steps outlined by OCR for a school system investigation, although events that occurred served to lengthen aspects of the review and the negotiations. This policy transformation process was altered slightly by changes in a second kind of "life cycle", a career cycle. The development of individual careers moved key persons out of the policy process and involvement in this review and usually at very crucial points. Gerry, for example, was removed from office after the letters of findings had been delivered but before the issues could be negotiated. The director who replaced Gerry had less support for the review, but had to continue the process that had been begun. The synchronization of these two cycles illustrated the importance of individual persons in key positions and what they contribute to the process.

Co-incidence of Issues

As noted from the assessment of issues only certain issues actually were resolved. The others did not prove to be sources of discrimination, had been redefined more narrowly, or were applied to another area. These issues that were resolved had two things in common: either they had been concerns of particular agencies or they were historical issues of debate and controversy in New York City. This coincidence of similar, commonly occurring events increased the likelihood that something, similar to the

resolutions, would occur. For example, the controversy over minority access to staff positions in New York City schools has been characterized by formal hearings and court cases over the discrimination that existed. Therefore it was more likely that this OCR investigated issue would be resolved and with more forceful changes, than would be the case for other less controversial issues.

Some of the resolved issues had a historical context of compromised controversy, within which they would be couched as the resolutions were being negotiated: The existence of old issues and sensitivities in part explains the attention paid toward certain issues of teacher assignment. This civil rights issue became couched in terms of minority/nonminority differences in assignment and promotion. This sparked off a much "older" issue of centralization in governing local schools. One of the most sensitive aspects of the decentralization laws was the control over teacher assignment and promotion. Interest groups and the Board of Education had long before been aligned for or against this form of management and its advantages and disadvantages for teacher assignment and promotion.

In summary, the policy process is a flow of events from conception to implementation, with points of decisions, consequences, and implementation of consequences. This process functions somewhat in a circular fashion as OCR remained as a check and balance system for how New York City was implementing the resolved changes or for any further investigations. The process was also circular because the stages of decision-making and implementation were repeated throughout each phase of change. Although each agency carried out different roles within these phases as these settings. Within this process are the contextual factors which serve as boundaries for what can and does occur. The roles of those individuals and agencies

involved exist and are carried out within this context and through manipulation of this context toward their own goals or objectives. The result of the combination of these factors, roles, and context create the complexity and dynamics of the policy process.

Chapter 14

MODEL BUILDING AND ANALYSIS

The OCR Review of New York City schools was studied in order to understand the development and implementation of a policy from a wholistic perspective, that includes attention to the process and dynamics that transform policy into outcomes. Various research models are applicable in examining decision-making or implementation; none are available that examine the entire policy process and its complexities. The theoretical development of these models can be used as constructs for a more comprehensive policy process model. The case study discussed serves as an attempt to describe the process as a whole as well as in light of the current theoretical developments which could inform such as analysis. The discussion that follows attempts to describe those factors that would contribute to the development for a comprehensive model and possible means of constructing a working model for analyzing and further studying of the process. The theory that has been incorporated into this working model does not represent an eclectic combination of ideas but represents the constructs which seem applicable, based on the case study.

Development of Policy Systems Models

Early theoretical models having to do with the policy process were of the political system and illustrated the combination of factors that influence decisions; the decision, or outcomes, were viewed as the result of the demands from the environment. This model is often referred to as a "black box", (See Figure 1) because it represented the formal actions of decision-making and not the internal activities that are involved in combining the external aspects to result in a decision.

This model was elaborated on by Wirt and Kirst(1972) in an illustration of the federal education policy decision-making process. This model (See Figure 2)

represented a chain of "black boxes" in which decisions at one governmental level were handled down to the subordinate level for implementation. This in turn became the basis for decisions by the subordinate administration to make and to implement. This model illustrates the cyclical nature of the decision-making and implementation within the policy process, and the relationship among the government levels as actions are implemented. This model is similarly illustrated by Williams (See Figure 5) as a model of the implementation process. Like the "black box" these models are criticized for ignoring the internal process either for decision-making or for implementation.

The concept of policy decisions passing through organizational layers as they are implemented has given away to two other conceptual developments. The first development reflects the separation of stages into two other of organizational relationships: macro- (which refers to the decision-makers perception of implementation) and micro- (which refers to the implementators perception of implementation) as were used in Berman's (1978) description of the implementation processes. In the second conceptual development, organizational layers are viewed as "linkages" and networks which reflect the degree of variations of "loose coupling" among organizations instead of hierarchical rank.

The above described models, however, also were to illustrate rational decision-making/implementation or policy system. Decision-making and implementation are no longer assumed to develop rationally, these models have been adapted as these processes were studied. One theoretical adaptation of the rational model, disjointed incrementalism, moved toward careful accounting of what happens between the ideal decision-making model and the more typical "satisficing" behavior that occurs within a decision-making process. This analytic method of contrasting the ideal with the

the behavior that actually occurs is also expressed in the implementation models. A common means of analyzing the implementation process is to contrast the implementation design and the final outcomes. Both of these adaptations acknowledge the interferences in decision-making or implementation process in a policy system.

Other models have also attempted to grapple with the issue of what characterizes the impact on the outcomes of the policy. Figure 4 illustrates one attempt at identifying these internal elements. Other theoretical and analytic developments have responded to this need to understand the internal dynamics by characterizing the outcomes of a decision or implementation process according to the organizational features or the political processes of the organization. As noted in the literature review, these two perspectives, coupled with the rational model, are common bases for studying the process of decision-making or implementation. [See Allison (1971) and Elmore (1978)] Through these analytical developments, elements and assumptions of the rational model have become more refined in their relationship to an organization and the outcomes of decision-making/implementation. The processes for organizational analysis and political analysis are also well defined in terms of the elements that are combined and the assumption about the dynamics of the impact on the outcomes. Each conceptual model, however, as their authors described, only reflect a particular theoretical perspective and will not be an account of the entire process. Application of these models is limited to understand and identify the rational, organizational or political processes at play.

As noted above, the development of a policy-related analytic models have progressed from sketchy to very detailed descriptions. They can be used to predict behavior when analysis assumes a particular theoretical perspective. They are limited in an application to a policy process,

because they explore the dynamics of only one developmental phase of policy transformation (decision-making or implementation) and to a particular theoretical perspective and not the relationships between the phases or the relationship that might exist among the elements of the various theoretical models.

An Application and Model-Building: Synthesis of Decision-Making and Implementation Models

As noted in the two model-frameworks described - decision-making and implementation - several similarities exist and are complementary. These models each give attention to similar theoretical perspectives and assumptions about organizational and political behavior. These models acknowledge, however, that the relationship among individuals, issues, and outcomes change depending on the setting of decision-making or implementation. Decision-making models, however, focus on a fixed activity and the relationship of the elements to the outcome of that action - the decision. Implementation models focus on a process which occurs over time and within various levels of an organization(s). Their explanations of behavior are similar, although differing according to the process. For example, in the model of implementation as conflict and bargaining (Elmore, 1978), the implementation process is viewed as a series of political decisions rather than as one, as in the governmental politics model of decision-making (Allison, 1971).

It is difficult, however, to clearly distinguish between decision-making and implementation process within a single policy transformation. The implementation process has several decision points although different individuals within different organization locations make the decisions. The delineation of the implementation process is not limited to the decision model; decision-making and implementation, however, implies a process of stages in which decision-making leads to implementation which in turn requires new decisions and actions as Figure 2 illustrated. These phases of decision-making and implementation are not so clearly circular, however.

Only within a rational model would the flow be as consecutive or well co-ordinated as the models illustrated in Figures 2 and 3 implied. Nor is the flow of decisions necessary from the top-down, such as from the federal to the local government (e.g., macro-model of implementation) or from organizational policy makers to "street level" bureaucrats (e.g., micro-model of implementation). The complications can best be explained by an illustration.

When OCR tried to collect the ethnic data on schools' staff, some of the school administrators refused to cooperate and tried to use the federal court to stop OCR's efforts. OCR in turn used these same mechanisms to enforce the administrators' cooperation to fill out the necessary data collection forms. Thus, as the local administrators tried to use a more powerful authority to control OCR's efforts, OCR tried to use this same authority to control the administrators, while, by-passing the administrators' primary authority, the central office administration.

Another example of the relationship of organizational levels and decision-making to implementation is the administrative complaint filed at OCR by the interest group lawyers. When they could not bring about the changes in the teacher access process for New York City public schools, they attempted to use the court system to force the Board of Education to change their policy. Because this process was so slow, they tried an alternative procedure; they asked OCR, a higher authority, to investigate the discriminatory impact of this policy matter. Again, this is an example where persons or groups of less authority try to gain the cooperation of sources of greater authority to bring about change in an agency under this greater authority, while by-passing the formal process.

In these examples, different levels of government and organizations combined forces to bring about specific decisions and ultimately specific outcomes. The concept of 'loose-coupling' rather of organizational layers

is more descriptive of this relationship of the different locations and different influences exerted to achieve particular objectives than is the concept.

Finally, as noted in the case study, the policy process (either decision-making or implementation) does not operate in isolation of other policy issues or broad social issues. These other issues may influence the policy process although they may not be part of the specific process in question. For example, it is difficult to identify the degree to which general public concerns about education affected the publicity and attention drawn to the OCR review of the New York City schools.

In summary, the models are applicable for examining parts of the policy process according to the theoretical approaches that underlie the different models. They are focused on different elements of the process and are useful in explaining the relationships (organizational or political) as they exist. These models however are not applicable to examining the whole process; when used in combination they can identify many of the relationships and processes in operation. They do not help in explaining the relationships of decision-making and implementation or the reasons the policy process develops as it does, except in terms related to a particular model.

Modeling

Although the purpose of this study is toward the development of a policy process model, this cannot be attempted without a discussion of the advantage and disadvantages of constructing such a model. As noted about each successive refinement of either the decision-making/implementation process or the political system has resulted in a more detailed, complex model. A comprehensive model, linking the processes of decision-making and implementation would likewise be complex. The goal in designing such a model would

be to illustrate the kind of impact certain elements can be expected to have and the kind of relationships that would exist in a given policy process. Such a model would also acknowledge the relationships of the various phases of the policy process, illuminating the existence of influential factors on the policy process and would be related to predictor variables.

Many theorists have described the difficulties which exist in attempting to comprehensively analyze the policy process. Van Meter and Van Horn (1975) stated that it was difficult to identify and to measure performance within the implementation process. According to them, the problems with such an approach are because that:

Many of the variables needed to complete an implementation study are difficult -- if not impossible -- to measure ... decisions in an administrative setting are difficult to isolate ... (and) a comprehensive analysis of implementation requires that attention be given to multiple actions over an extended period of time, thus involving an enormous outlay of time and resources. /p. 451/

There would be a point, too, at which a complicated model would not be useful, because of its combersomeness and lack of means for understanding the relationships among the identified elements, (unless these relationships were also modeled). In general, the policy process's complexity would probably be difficult to model.

Various attempts and suggestions for a comprehensive model do exist. Allison (1971), Peterson (1976), and Elmore (1978) each designed models of the decision-making or implementation processes. All agreed that their various models of a process are themselves competing and if used alone could not describe the entire policy process. Peterson (1976) suggested that the use of a model would depend on the kind of prediction an analyst would want; he does not suggest a way to describe the process (in his case, decision-making) comprehensively. Elmore's recommendations were similar; he also did not suggest a way of combining the information gained from analyzing

the policy process (in his case, implementation) using his four models. He did suggest however, that if a process were to be analyzed comprehensively, the parts would need to be treated as analytically separate.

Allison (1971), however, suggested ways to combine his three decision-making models. Although admitting that they can often generate competing information because the models are not equally applicable to a decision-making process, he suggested (as described in Chapter 2) that Model I be used to establish the policy context, the larger organizational patterns and the shared images of the decision-making process. Models II and III can be used to identify the organizational routines and the political behavior of the process.

Other theorists have described a policy process (at the point of decision-making or implementation) as a single comprehensive model. Van Meter and Van Horn (1975) have posited a theory of implementation which suggests that (a) the implementation process will vary depending on the nature of the policy to be carried out; (b) the changes involved and the extent to which there is goal consensus among the participants in the implementation process; (c) the degree of conflict and consensus over the goals and objectives of the policy; and (d) the relationship of the implementation process to the environment (such as the person in charge, the projects, the demands and resources) and the conversion process for the policy. Their model is very similar to Gergen's model (1968) in which policy formation depends upon the relationship between leverage points and the transformation of the policy, and is analyzed in terms of the leverage combinations of issue relevance, subphases resources, and personal efficacy to impact on the process. The various dynamics that make up this model, described in the policy transformation is created through the combination of these elements.

Although the earlier models are more detailed the lack of means of incorporating the context of the process, the characteristics of the policy and the circumstances around which a policy or program was necessary. The implementation model of Van Meter and Van Horn (1975) and Gergen's policy formation model stressed these aspects as major determiners of the policy process. Van Meter and Van Horn (1975) have also described the limitations of current models:

The foci on the determinants and consequences of public policy have added much to our understanding of the policy process. Yet, neither tells us a great deal about how policy decisions are transformed into public services. [p. 447]

These limitations can be applied to the policy process as a whole as well as the implementation process.

It is still premature to develop a comprehensive model of the policy process. A case study approach to theory-development can only identify certain processes characteristic of a policy process, that can be reexamined more carefully in other similar, although more focused, studies. At present the identification of these processes and the relationship of various elements within the policy process would be more useful in an analysis of a policy process.

A Working Hypothesis of the Policy Process

In lieu of a comprehensive model of the policy process a 'working hypothesis' representing a comprehensive perspective of the policy process has been developed. As Hargrove (1975) suggested, once the process and problems of one policy is understood then there are possibilities for comparative analysis of program operations across a number of fields. The same applies to the policy process. The ultimate objective for analysis is to gain knowledge from one policy case to use to enlighten another. Yet, it would be difficult to incorporate the variations and purposes of contexts, elements, and substance to a policy process that would be necessary for a comprehensive model. Such a model would need to identify both the elements and the range of qualities of the elements, the relationship of the elements within the process, and the variations in the configurations of these factors through the progress. Because the policy process is so complicated, several related processes have been identified as mechanisms for describing a policy process and hopefully predicting the elements and combination processes that transform the policy and lead to its outcomes. The following is a detailed summary of these processes. These are not a complete nor comprehensive description of the policy process; yet, it is hoped that these take into consideration all of the necessary elements and many of the observable processes that transpire throughout a process. The next step would be to examine another policy process where these same qualities can be re-examined in a new context. In this manner the relationship of processes and elements and the context can be compared to determine why certain characteristics influence the development of that process more than others,

1. The context of the policy process is an important influencing factor in the outcome of the policy process. The context represents both the setting

and the available resources for the policy process. As a process, the context as represents Bauer's "envelop of issues and events." Therefore, the context, as described in the preceeding chapter determines the boundaries for the process as it occurs.

2. The policy is transformed through various phases from planning, decision-making, implementation and institutionalization of change to achieve certain outcomes. Each phase is characterized by a distinct set of problems, opportunities and constraints. The phases are not necessarily mutually exclusively occuring events, but may occur co-incidentally. In addition, the actors, issues and resources that characterize one phase may or may not characterize another. Yet, there is a relationship among these factors, from phase to phase. As Van Meter and Van Horn (1975) suggest, because factors at one stage may not be important at another the importance and timing of these factors at the different stages need to be pinned down. Changes in these factors may provide insight into how the policy is being transformed and what factors are having impact.

3. The dynamics of the policy process are the juxtapositions of these factors throughout the process. It is these relationships that need to be examined further. Some of these processes such as networking, co-incidence of issues, and the relationship of values and personal leverage were discussed in the preceding chapter.

4. Certain factors have greater impact on the transformation of the policy than do others. The knowledge of these factors and their relationship within a particular phase of the process can serve to predict future relationships of factors and impact within the same process. One type of relationship is that the events that occur and the history of the issues or of the actors. This will identify what happened during previous, similar occurrences with those issues or for those actors.

5. There are predictable relationships between the decision-making and implementation processes. As Berman (1978) noted, the decision-making process is a forcaster for the implementation process. As noted above an understanding of one policy process phase can serve as a predictor of another. The theoretical areas of decision-making and implementation studies are highly developed. Although they have different focuses, they illustrate a great deal of consistency in the modeled areas and an understanding of the process from these perspectives (as noted in Chapter 2). Combined, they can be used to analyze the policy process more predictively, especially when consistent trends between decision-making and implementation are identified. Their theoretical insight can be extended to all phases of the policy process, with adjustments for the differences characteristic of these phases.

6. There are reasons, that within a particular policy context, the events that occur and actions that take place can be better understood when described either organizationally or politically. While the organization (or individual) does not plan intentionally to behave organizationally or politically within a particular context, the behaviors exhibited can better be described organizationally or politically. Neither of these processes are mutually exclusively occurring processes; one process however can be described as the more obviously occurring. This context should then be studied in terms of when one theoretical perspective can better describe the process than can another and later, when the process seems to change, to examine what elements about that phase are different, to exhibit this change.

7. The issues and the values of the process are directly related to the transformation of the policy, the degree of involvement of the organizations (or individuals) and the problem of this involvement, and the outcomes of the policy process. The less the positive or negative reactions to the issues the less complicated are the above factors.

10. The policy process can be viewed as a series of predictability occurring process tendencies that can be identified with a knowledge of the characteristics of the issue, roles, and context of the policy.

A comprehensive means of focusing on the policy process can best be examined, especially for comparative analysis, by incorporating various suggestions into Allison's (1971) suggested model for a comprehensive study of the policy process and by extending the basis of this model from decision-making process to the entire policy process. Model I can be used to fix the broader context of the decision-making (and in this case, the policy transformation) process, identifying the larger national (or any individual or organizational) patterns and the shared images. This would also include identifying the "envelop of issues and events" (Bauer, 1968) for the policy process. Model II would illuminate the organizational routines that produce the information, the alternatives and the actions. This would be applied to all organizations or individuals involved and would be re-examined for each phase of the policy process, from both a macro- and a micro-process perspective. Model III would in part be used to focus on the individual leaders of an organization and on the politics among them that determine the major choices that are made. This would also be applied to any person in a position of leverage, involved in the policy process and not just the leaders. In addition the social, economic and political elements which impact on their choices will be incorporated as well. This conceptual model will serve as a basis for studying a policy process and for examining more closely the process tendencies outlined above.

Chapter 15

RECOMMENDATIONS

In an exploratory study of the policy process, refined methods of studying a policy process or examining more specific aspects of policy can co-incidentally be discovered. As an understanding of the policy process and how to study it progresses, more systematic means of collecting data and more narrowly defined research topics are identified. In this case the specific recommendations for future research are identification of: methods for conducting a similar study; methods for studying other studies; suggestions on theoretical model building.

To conduct a similar study several methodological suggestions would be worth consideration. The focus of such a study should be more clearly defined piece of policy. This policy review was the result of several pieces of policy and in turn created several new policy statements complicating the dynamics of the policy itself. The review process served to delimit the boundaries of what was being studied, however, the origin and the characteristics of a policy should serve this purpose. If possible, a policy should have been selected for a clear beginning and a clearly identifiable ending. In this case it was difficult to end the study because the issues developed in many different directions.

There are several complications in researching a policy process such as the lack of observable activities, the numbers of individuals involved and the nature of the policy that make it difficult to follow a policy's development and to collect data. A research strategy should be flexible enough to take this into consideration; that is, to follow leads on different aspects when it is appropriate and when the data is permitted to be collected. In this study, the occurrence of major events indicated when information

of current negotiations; they would discuss that process more easily after the negotiations were concluded, although all information would have to be collected from their memory of the situation.

The OCR review, the focus of the study, could also be the focus of much more narrowly defined policy studies. For example, some of the different identified process tendencies - such as organizational networking - could be examined and their structure in different contexts could be compared more closely than this research effort allowed. The role of the law, statistics or history could each be examined more closely to understand how they were used to change the policy outcomes and the degree to which this was successful. The process of sorting issues from their identification through to the negotiations could be studied according to the historical context of these issues, and relationship of the issues to the agencies of the study (e.g., which issues were supported and which were not). This process could be examined according to the co-incidence by which similar issues occur and the relationship of the degree of their co-incidence and the probability they will be resolved. The role of each agency could be studied indepth in a manner similar to Allison's study of the Cuban Missile Crisis; each agency's change tactics at different points along the process could be examined.

A study of the issues of this review could be continued, either to complete the case study or to follow-up on the issues several years from now. Various identified patterns of the policy process could be re-examined to test these theories. To actually conduct the research of the similar policy studies, several suggestions might be northworthy. Because policy issue development is not an observable activity the persons and organizations involved with its development must be the focus of attention and study,

Collectively, the information developed can be used to construct the policy development and implementation process, as in this study.

The policy process will have cycles in which different kinds of information can be collected. For example, during the negotiational process, few of the participants would either describe the current activities or project the probable outcome of the negotiations. It was much easier to collect the information in retrospect, at a point in time they felt more comfortable discussing what they felt to be a fairly confidential piece of information. If a research design must rely on the memory and recall of participants, then means of cross-validating the information collected must be developed to check the accuracy of the information and to identify the participant's perspective. The interviews can also be supplemented with archival review data as well.

The process itself could continue for years and across various organizations simultaneously depending on the policy. For this reason the collection of data, the cross validation of information and the identification of sources of information must be carefully planned out or incorporated as the process is studied. The development of hypotheses should begin early in the research process so that tentative hypotheses can be checked out and reworked as data is collected. To facilitate the development of hypothesis and a comprehensive case study, early in the data collection process drafts of the final case study should be written as completely as the data will permit. Questions about the process will emerge as the steps of the process are reconstructed in the case study. The incomplete or contracting information will also be evident as the case study is developed.

To follow up the focus of this study, however, it is not suggested that a comprehensive model of a policy process be developed. Rather, it is necessary to understand the processes that occur as policy is developed

and implemented and to understand why it occurred in the fashion exhibited. For example, why are some elements such as the kind of organization or the kind of issues in question more important to the outcomes of the policy in some policy process than in others. Once the relationships among the stages of policy, the processes in developing policy, and the context of the policy are understood then a comprehensive model can be discussed.

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